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LAW IN URBAN PLANNING AND DEVELOPMENT IN EAST AFRICA

GEORGE W. KANYEIHAMBA, LL.B. (Lond.), LL.M.,
Barrister - at - Law, Advocate and
Senior Lecturer, Faculty of Law,
Makerere University, Kampala.

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EPITOME

This study is intended to be a critical examination of the role of law and the legal profession in Urban planning and development in the context of East Africa. It discusses the actual, proposed and possible functions of law and gives a critical analysis of shortcomings in the existing law and attitudes towards the planning process. It begins by discussing the various notions of planning and development and what these mean to different groups of people whose work relate to the subject of planning and development. The first three chapters may be regarded as setting the scene in that they outline the perspective of the study, describe the region and its people, deal with the current and future problems of urbanization, discuss the land tenure systems and evaluate the processes of acquiring land for urban planning and development.

The middle of the thesis, and particularly chapter five examines the organs, institutions, bureaucracies and infrastructures of urban agglomerations. Chapter six deals with land use planning, the aims and objectives in such planning and how the resulting plans are implemented and enforced. Of special interest are the functions fulfilled or to be fulfilled by lawyers in this process. Chapter seven discusses housing as one of the important objectives of planning and evaluates the agencies of development including foreign investments, building societies and self-help projects. Included in this chapter are urban rates and rents. The last chapter is a resume' of the study but concentrates on what the author has called "The Lawyer's 'brief' in Urban Planning and Development".

The theme of the study has been that planning and development is a multi-purpose, multi-disciplinary subject in which law must play its part.

Consequently, there has been considerable use of materials and authorities traditionally regarded as "non-legal". One of the fascinating points in this kind of study is the use and analysis of such materials and authorities for the purpose of producing a legal discourse.

CHAPTER ONE:	GENERAL INTRODUCTION
PART I:	EXPOSITION OF THE SUBJECT
SECTION (a):	THE IDEA OF PLANNING AND DEVELOPMENT

The purpose of this study is to examine, discuss and evaluate the functions of law and the legal profession in the urban planning and development of East Africa. To appreciate these functions it is essential to understand the concepts of planning and development in the context of urban agglomerations. Used in its narrow and technical sense, the word "planning" relates to activities normally undertaken by traditional planners. These are the city and town planners who are professionally qualified to survey land, draw maps and draft land use plans designed to shape, direct and control the growth and development of urban environments.¹ The written and drawn work of these experts may be found exhibited at city and town halls or deposited with relevant departments of government. The practical interpretation of such work may be evidenced by the structure and outlook of the city or town, its buildings and their designs, the road networks and streets, the civic centres and open spaces as well as by private developments that may be found in scheduled planning areas. On the other hand, when used in its widest sense, planning is an activity that concerns everyone. Everyone plans whether they are politicians, legislators, administrators, geographers, economists, engineers, lawyers, sociologists or ordinary citizens.

The word "development" describes the results of a plan implementation. Thus, when the town planner draws a map showing which zones in the planning area are residential and what type of houses may be

constructed therein, he is planning and his drawing is said to be a plan. Assuming that the plan is approved and a builder constructs houses in the said zone according to the planner's specifications, the builder is developing the area, and when the houses are completed it may be said that there has been a "development." In this respect the words "planning" and "development" are used in a physical sense. However, they may be used to indicate that some benefit or advantage has accrued to the inhabitants for whom the plan is made and the development intended. For example, suppose that there were a slum area in the town accommodating five thousand people in dilapidated buildings. The town authorities decide to replace the buildings by the construction of ultra modern houses. The residents are evicted and given no alternative accommodation. Thereafter it is discovered that the new houses are too expensive and only several hundreds of the residents can afford to buy and rent any of them. The majority of the houses are destined to remain empty. It is doubtful whether the overall results could be described as development. In this study "planning" and "development" will be used to reflect that the consequential results are intended to better the conditions of the communities concerned.

Sometimes the words "planning" and "development" are used interchangeably for it is not always clear where planning ends and development begins. The distinction between the two becomes one of degree rather than substance. The residents who urge their local council to redevelop a slum area may be thinking of development but their action brings into play matters that relate to planning. The developer who constructs buildings is carrying out a development but in doing so he must plan for labour, personnel and equipment. The bank which lends him a loan will plan for repayments of capital and interest. The residents, the

local council, the developer and the bank are all involved in one process in which planning and development change places at almost every stage.

Thus, in one sense development is the genus of which planning is a species. In another sense, planning is the basis on which development is founded. The discussion of one implies an understanding of the other. It is possible to plan a development just as it is feasible to develop a plan. In practice there can be planning without development but the reverse is not true. It is sometimes said that one can have development without planning. Shanty towns which mushroom in the peri-urban areas of cities in developing countries are often given as examples of this phenomenon. In reality this description is a misnomer. Developers in shanty towns will usually undertake elaborate planning, particularly when they are aware that there is no security of tenure for the developments they have effected and the only way is to make profits from their investments in the shortest time possible. What is usually meant by unplanned development is that the given activity has had no official sanction, that whatever is being done is contrary to or outside the official schemes of the planning area and is proceeding without official control or direction.²

SECTION (b): DIFFERENT VIEWS ABOUT PLANNING

Used generally the word "planning" is capable of conveying different meanings to different people at different times and in varied circumstances. In his introduction to "Urban Planning and Land Development Control Law", Hagman states,

"Everyone plans - governmental, industrial and commercial institutions, non profit religious, educational, cultural and political institutions, and private persons. Nonetheless, planning is difficult to define."3

In this context professor Hagman is describing planning in its widest possible meaning. Thus, the government plans for its next budget, the board of directors plan where, how and when the next manufacturing plant of the company shall be sited and constructed, the church leaders plan where and how to hold the next religious festival while a depressed individual may plan how and where to commit suicide. Looking at these various plans one may think that they have nothing in common. The professional land use planner is likely to dismiss them as being irrelevant to his functions just as a lawyer may dismiss them as the concern of laymen, religious fanatics and psychologists.

However, a closer analysis of the plans may reveal remarkable similarities and relevancy to planning and development matters. The government's budget affects the availability of funds for urban planning and development. Its taxation proposals may restrict land markets and construction of houses. The company's new investments are likely to increase the burden of providing extra accommodation and transportation of workers and will invariably affect the industrial zone of the planning area. The religious festivals and suicidal tendencies of individuals may

be relevant factors to predetermine the thinking and goals of planners. Similarly, the lawyer may have to advise his clients as to their rights and duties in respect of the taxation measures introduced by the budget and insofar as these affect their land and proprietary interests in the planning area. He may be concerned with the law of trespass as affected by the religious festival and with an inquiry into the plan and design of the residential estate whose resulting environment might have contributed to the individual's decision to commit suicide.⁴ If planning is limited to physical planning, that is, land use planning, then perhaps the kind of planning described above is not planning in the real sense of the word. On the other hand, if functional planning is meant these fact-situations may directly or indirectly influence goals and objectives in planning and development.

It is equally important to discover what planning means to people of different political ideologies and views and of different professions since the success or failure of any given plan may depend on the interpretation of planning given by these different groups of people. Moreover, even within one group of identical ideology, or professional views, planning is likely to mean different things depending on whether it is viewed from international, national, regional or local levels.

POLITICIANS:

Since the politicians are legally and largely responsible for the determination of planning policy and since they often control the financial resources necessary for planning and development their views on planning are of paramount importance. Many of the planning schemes and development projects in the developing countries continue to depend on financial aid,

technical assistance and personnel loaned from the developed countries. Consequently, the planning thinking of politicians in the latter countries may have a direct bearing on what planners and developers do in the former countries. Thus of this assistance to East Africa it has been said,

"It was nevertheless felt that strong political strings have been attached to some proposals in East Africa..... More subtle but perhaps less significant influence may be exerted on social and political policy through recipient countries working out their plans with an eye to meeting the requirements of prospective donor countries. Foreign assistance may thus lead to 'plan distortion'."5

The analysis of public policy statements made by politicians of the developed countries when explaining their financial aid to the developing world indicates that most of them are genuinely concerned with the underdevelopment of the recipient states and would therefore wish to see their aid used in a manner which will bring the greatest benefit to the people and raise their standard of living.⁶ The politicians in the recipient states usually echo the same sentiments when publicly accepting or soliciting for foreign aid.⁷ There are other studies however which reveal that the ulterior motives of these politicians are not always connected with the reasons for which the aid is given or used.⁸ There are some governments of the donor countries which see planning and development in the recipient country as a process intended to produce favourable results to the donor country irrespective of whether or not the latter benefits. Others see it as a means of enhancing the political reputation in the world of the donor state. This may

result in aid agreements insisting that only prestigious highways, streets and buildings be constructed notwithstanding the needs of the local population which might have benefitted from simpler and more modest projects. Describing the purpose of bilateral aid agreements, Gitelson has observed,

"Most countries offer assistance for various political, strategic, economic and humanitarian motives, some more self-interested than others. They hope to enhance their prestige and political influence, to secure military bases or to ensure that a particular country does not go over to another side in the Cold War. Bilateral donors also want to find markets for their products, and at the same time, promote the economic development and modernisation of the other countries.⁹

Commenting on foreign aid from an economic viewpoint, Dr. Kamark of the World Bank also observed that bilateral programmes often stress promoting the sale and distribution of the products of the donor countries and that this frequently means that the developing country does not have a chance to choose the most suitable and least expensive goods on the world market, nor to encourage its own import-substituting industries.¹⁰ It is of interest to note that in East Africa urban planning and development is closely linked with economic development and the establishment of local industries. This point may be illustrated further by the fact that whenever the government of the recipient state has pursued political policies which the government of the donor state regards as contrary to its own interests the latter has withdrawn or threatened to withdraw its financial aid notwithstanding that the bilateral aid agreement did not contain specific provisions relating to the policies.¹¹ Often it is

the ordinary people rather than the members of the government of the recipient state whose urban development schemes and projects are affected by the withdrawal in spite of the fact that they may not have understood or approved of their government's policies.

On the national level, politicians are anxious to compromise political considerations with planning principles and needs. They may be more concerned with the impression their planning policies will give to the electorate rather than their effect on planning problems. In democratic countries possessing more than one political party, one is often struck by the sharply opposed views of the different political party programmes involving planning and development matters.¹² Professor Hagman who made a special study of the Greater London Development Plan was able to report the remarkable unanimity of each major political party represented by the Greater London Council in respect of the development schemes proposed in the plan. He observed that when it came to deciding on the recommendations, councillors voted for the official views of their respective parties. The Conservative councillors would unanimously vote for Conservative proposals and amendments which would be unanimously opposed by Labour councillors and vice versa.¹³ Yet, it cannot be seriously argued that only one of the two parties on the Council has the monopoly of members who have special knowledge and better judgment of the urban planning problems of cosmopolitan London. It is reasonable to assume that in debating the various planning proposals of the city, councillors were much more influenced by party loyalty and political expediency than by a rational and impartial consideration of the merits within the proposals.

It is possible for political advantage to supercede planning

considerations in national and local urban plans and schemes. The Conservative party, in sympathy with its electoral supporters, may encourage the construction of owner-occupier houses and legislate for the release of land for private development while the Labour party may, for the same reason, encourage the construction of council houses and the release of land for public development.¹⁴ It is only on rare occasions that members of the British Parliament representing a cross section of all parties express identical views on planning and development policies, but often it is because those policies affect their own constituencies in a direct manner. For instance, when the government was defeated on a division in the House of Commons on the construction of a third London airport in 1973 the breakdown of voting showed that the majority of Conservative members who rebelled against their own side and voted with the Labour opposition came from constituencies which were near or would be affected by the construction of the new airport. Before this Bill came to the House there had been another one called the Water Bill which was introduced in February 1973 and which reduced some of the powers of certain boroughs in connection with the supply and control of water. Mr. Hunt, a Conservative member, participating in the debate, had this to say,

"Tory and Labour members of the Greater London Council and those in London boroughs were united in condemnation of the proposals and felt bitter about the Bill which deprived them of responsibility for major water and sewerage work".¹⁵

The contradiction in policies is often said to be a fair price to pay for the preservation of democratic principles. Yet, the reality of

the situation may mean that the solution to the planning and development problems of the United Kingdom lies in taking a neutral and compromising position instead of adhering to party principles and slogans. There are certain issues within British politics such as Northern Ireland and immigration on which there is bi-partisan understanding on proposed solutions and it may be that the problems of urban planning and development properly belong to this class.¹⁶ It is also true that in non-democratic and authoritarian societies of which the developing world has a fair number, political considerations and the legitimisation of power often override planning and development notions and principles. Moreover, the phenomenon here is more easily achieved because the regimes in such societies are rarely accountable to the people.¹⁷ Consequently, the planner's careful zoning of the planning area may be upset by the regime's desire to construct a prestigious civic centre in a commercial zone and his economically and professionally designed street system may have to give way to the government's proposed boulevards. More often than not the residents of the area are not consulted as to the best planning or development they would like to see in their area and if they are, the consultation is no more than a public relations exercise with little effect on the predetermined ideas of those in political power.

The foregoing discussion has centred on the fact that to the politician planning may mean a different thing from that understood by professional and other planners or envisaged under the existing laws and policies and, that what he may consider as being successful planning and development may not be so much what brings benefit to the greatest number of people but to those who are in a position to guarantee his stay in or return to the power of government. When advising the politician,

the professional planner may be anxious to ensure that the whims of the former do not divert too much from what is regarded as better planning and development. However, he may not be qualified to extend his advice to legal principles of planning. It is therefore argued that the engagement of lawyers in the planning process may serve this need. The use of the lawyer adds another dimension to that process. It can be said that the legal profession contains certain qualities which enable its members to enlighten politicians on the legal consequences of planning proposals. Moreover, even if it is assumed that there are no legal principles involved in a particular issue of planning and development, the employment of the lawyer in the planning process may still be an asset to the community in that he is perhaps better qualified to advocate the alternative choices open and to highlight some of the follies likely to occur by the pursuit of unnecessary departures from planning norms.

Invariably, the politician will have his way but at least he will have been made aware of the alternative choices backed by precise legal arguments and, at best, he may accept the legal advice. It may be debatable, but the statement that one should not perform a certain act because it is contrary to law is likely to have a greater impact than one which simply states that the act is contrary to planning and development principles. The politician being the policy-maker at most times considers himself as well qualified to determine planning goals and objectives but it is not always that he admits as well to being a legal expert to determine the legal limitations against his proposed action, thus, the proposal that lawyers should be full participants in the planning process including determination of policy.

TRADITIONAL PLANNERS:

The traditional planners may be discussed as the next group. In the United Kingdom and many of the Commonwealth countries this group is almost exclusively composed of engineers, surveyors, land officers, geographers, sociologists and administrators, normally referred to as the "planners". This may be contrasted with the United States of America where the group is dominated by "businessmen, realtors, lawyers, architects and engineers".¹⁸ The duties and powers of planners in the Commonwealth countries are often provided for in statutes, regulations, ministerial orders and local authorities' bye-laws. The planning process on the other hand is designed to implement national and local policies as determined by local and lay members of representative or nominated bodies and on the advice of the professional people as outlined in the group. Thus, statutory law or regulatory law is intended merely to give a framework within which the policies are expected to work. Between them the law and the policies cover both physical and structural planning, but in the main the traditional planner concentrates on physical rather than structural planning.¹⁹ To him, planning is essentially the surveying and designing of the planning area, the drawing of maps, the zoning of land uses and the control of land works operations.

While this narrow approach to planning has its own uses in that it projects the probable land uses and values to guide policy-makers, land users and developers, it is nevertheless partial in the sense that it relegates structural or environmental planning to a secondary position. In England the traditional planner's approach has been criticised as failing to take into account results that may be contemplated from his

plans. The English Planning Advisory Group has observed that planning is not merely a matter of advocating land for various kinds of development but is also concerned with the quality of the environment that is produced. Because the traditional planner is often preoccupied with physical planning per se, he sometimes produces plans that are out of touch with the reality of the situation and which are inadequate to cater for the needs of the community. The Planning Advisory Group, mentioned above, reported that,

"The system of control was effective, but that control was based on plans which were out of date and technically inadequate..... It had been assumed that the population of Great Britain would become static..... this assumption has proved entirely false..... no-one forecast the enormous increase in the volume of motor traffic".20

In the light of these two trends, the Advisory Group saw need for a much more flexible development plan; they recommended that there should be broad structure plans which would require the approval of the Minister, and local plans which would not require ministerial approval. As it will be seen later, in East Africa, the traditional planner took into account those demographic factors, the political and economic conditions that were existing at the time he formulated his plans. Consequently, only small areas of the urban centres received his attention. He zoned the planning areas into elitist and poor zones on racial lines without contemplating that at some future date the towns would grow in size, the poor people might become sufficiently sophisticated to want to join the exclusive areas for the richer and that the trends in world politics were such that these countries would become independent one day and ban

planning schemes that permitted racial discrimination. We have observed that in East Africa and indeed, in many developing countries, the city dweller lives part of the time in the countryside. In addition, a large number of the urban residents are rural immigrants to the city. They leave a relatively homogeneous environment for an almost incomprehensible vastness and heterogeneity. They must adapt to new and unfamiliar ways of making a living and having large numbers of impersonal contacts with other human beings. They must face new forms of recreation and have to face new kinds of housing, sanitation, traffic congestion and noise.²¹ In this type of situation physical planning alone is extremely inadequate. Discussing urbanization in newly developing countries, Breese noted a great gulf between the objectives of planning and planning in practice:-

"The fate of many plans is not surprising. For example, a plan may go "on the shelf" with little impact upon the actual situation..... Perhaps, for example, the public works department or other officials will be converted to the concept of comprehensive planning, that is, considering related factors in anticipating the kind of problems which may be faced in the near and distant future - rather than working on a provincial and ad hoc day-to-day basis".²²

In addition, planning and development needs the understanding of procedural rules. These are rules which determine when and how public enquiries should be called and held, the evaluation of expert and public opinion about planning issues, how to negotiate and advocate for alternative choices in planning and development schemes and projects and how to balance individual rights with economic factors against public interest. As presently constituted, the planning structures in the Commonwealth seem to be insufficiently suited for all these tasks. It will therefore

be argued that many of these tasks could be performed better if lawyers are allowed or persuaded to participate fully in the planning process. The acceptance of this argument may assist in the elimination of situations in some developing countries where an American Development Team was surprised to find that

"the engineers in government will continue to design legislation for slum clearance, land consolidation and pollution control. In most such instances, they will not only design, but will actually write the laws, with lawyers entering only in the final stages to provide the cosmetic 'whereas's'".²³

However, before the argument that lawyers are necessary in planning and development can be sustained it is necessary to examine what planning means to the legal profession.

THE LAWYERS:

Most lawyers would see their function in society as the ability to apply the existing law, duly passed or promulgated, to given facts and behaviour for the purpose of determining legality and therefore establishing the rights, duties and liabilities of the individual against some other individual or against a private or public body in particular or generally, *mutatis mutandis*.²⁴ Not only must the law exist at the time of application but the facts and behaviour to which it is to relate need to be real and in the past. The legal profession tends to avoid speculative and theoretical problems. On the other hand, planning is primarily concerned

with what should happen in the future. It speculates about the probable results of future situations.

There is thus an apparent contradiction between what many lawyers regard as their function in society and the role of the planning process. For example, for most lawyers, the only time they ever come close to the principles of planning is when they are asked to draft planning statutes, regulations and bye-laws or to assess the legal consequences of planning policies or decisions which are being implemented. It can be seen that here they are dealing with law which is existing and fact-situations which are past or at most in the present. Moreover, since the substance of such statutes, regulations and bye-laws is initially determined by the politicians, the government and administrators - generally known as the law - and policy-makers - lawyers can only claim - and often do - to play the humble role of interpreting and applying the law.²⁵ It follows that the problem of getting lawyers to be involved in the planning process is twofold. First it is necessary to persuade the layman to accept the lawyer as a full participant in the planning process. Second, the lawyer himself needs to be convinced that he has special qualities to contribute to the task of planning and development.

The reasons for the relatively minor part hitherto played by lawyers in the development and planning of their societies are easily found. For instance, in the United Kingdom [where East Africa has inherited from most of its planning laws, techniques and precedents of planning as a law are relatively recent developments.²⁶ This is the case notwithstanding that the country is reputed to be the earliest in experiencing urban planning problems. There are relatively fewer law books written on the subject than those that have flooded the law market on the more traditional

legal subjects like Land law, contract, criminal law, constitution and tort. Planning law is usually to be found tucked away in some big volume of land or property law and is occasionally discussed as some new development introduced to disturb well established notions of land tenure and proprietary rights for the benefit of the general public.²⁷

The lack of interest in planning as a discipline for lawyers has been explained on a number of grounds. In England, for example, the legal profession was developed as a service to sell to the wealthier members of society. Writing in his 'chronicle' Plucknett wrote that "the attorney was a great convenience to wealthy land owners who were constantly involved in litigation and found it troublesome to appear personally".²⁸ This has led an American scholar to remark that it is not too unreasonable to conclude from this that the orientation of these lawyers was favourable to the wealthy class, and that to buttress the monopoly of that class was the principal reason for the existence of the lawyers.²⁹ The profession developed technical rules and canons of etiquette which rendered the law a mystery to the ordinary people. It became a closed shop with the right to decide who to educate and admit to its membership. It developed forms of action and rules of procedure intended to predetermine the rights of the individual and the legality of his actions and behaviour in society. The best lawyers became those who could argue to fit cases in the previous experiences of the law rather than those who could forecast the legal consequences of future behaviour.

Even when later Parliament created new powers and vested them in public authorities to promote planning objectives the legal profession continued to interpret them in the context of the ancient common law principles. Thus in Stroud v. Bradbury Corporation, 1952,³⁰ when a

sanitary inspector exercised his powers of entry, Lord Goddard declared,

"when the sanitary inspector of the Council arrived, the appellant obstructed him with all the rights of a free-born Englishman whose premises are being invaded and defied him with a clothes' prop and a spade. He was entitled to do so unless the sanitary inspector had a right to enter."

This case is cited here not to show that it was wrongly decided since its merits have not been examined but to show the paramount thinking of lawyers when considering cases that involve planning principles. His Lordship and counsel in the case had been influenced not by the relevant statute or the implied planning notions as much as they had by the common law powers of entry as pronounced as early as 1603 when it was said,

"the house of everyone is to him as his castle and fortress as well as for his defence against injury, violence as for his repose", 31

and in Entick v. Lord Carrington³² in which it was said

"every invasion of private property, be it ever so minute is a trespass".³³

It is equally questionable whether under the circumstances of Stroud's case, Lord Goddard was justified in using the strong words "whose premises are being invaded".

The lawyer's attitude to planning in the United Kingdom has been eminently analysed by Professor McAuslan in an article entitled "The Plan, The Planners and The Lawyers".³⁴ He begins by saying that the lawyers'

attitudes to land use planning are shaped by three important factors, namely, the nature of the traditional common law remedies available in the courts for dealing with various forms of interference with land; the normal clientele of lawyers; and the professional life-style of lawyers, which between them include scepticism of the benefits of planning and a stress on the rights of property-owners. He then proceeds to elaborate on each of these factors. Firstly, the lawyer's traditional contact with land is very oriented towards the rights and powers of the individual landowner. Secondly, most of the clients represented by the lawyer are those who have property and wish to deal with it in some way, or obtain property, or try to prevent other persons, particularly public authorities, from interfering with their property. Thirdly, the methods and organisation of work of lawyers, especially barristers, are the very antithesis of planning. In this respect, McAuslan observes,

"Barristers are virtually unable to plan their week's work, or, in some cases, even their day's work. They live at the mercy of events over which they have scarcely any control.....
Living at the mercy of events, dependent on market forces and individual effort, the barrister easily adopts an attitude of opposition to the concepts and notions behind land use planning".³⁵

The conclusions to be drawn from this analysis are that the legal education to which the lawyer is exposed in the early days of his career are not geared to planning, that the type of clientele he represents and the services he is supposed to render to them force him to regard the concepts of planning as an evil against their interests and that in any event he has not got the time for planning matters except insofar as they affect the interests of his clients. He is not concerned with the

merits of planning as much as he is about their adverse effects on the proprietary rights of landowners who have hired and paid for his services.

In his zeal to protect those rights, he will cite ancient judicial precedents even when they have been overtaken by planning progress.

Citing St. Helen's Smelting Corporation v. Tipping, 1865,³⁶ Rylands v. Fletcher, 1868,³⁷ and Cooper v. Wandsworth Board of Works, 1863,³⁸

McAuslan states that though it is a hundred or so years since this trilogy of cases was decided and though there has been accretion of statutory powers, duties and prohibitions in respect of land use, the three cases continue to be honoured in the learning of law and therefore in the lawyer's acculturation process.

McAuslan's observations may be said to depict a common attitude among the members of the legal profession in countries which follow or have adopted the Common Law principles. This phenomenon has been observed in the United States of America where in 1933, Berle observed that

"The financial interests are amply represented by legal skill, while the vast disorganized public, composed of investors, workers and consumers, is not represented at all. The commercialization of the American bar has stripped it of any social functions it might have performed for individuals without wealth."³⁹

Thirty years later, another American, Byrd Jr., was still able to observe that the role of the American lawyer in economic and social development has been generally negative and even obstructionist.⁴⁰

The same professional attitude prevails in East Africa where lawyers continue to draw most of their clientele from property owners, particularly those who reside with them in the urban centres of the region.⁴¹ Writing

in "East African Law To-day",⁴² Professor Twining says that the dominating foreign influence in legal matters is British, and especially English. The Second Vice-President of the Republic of Tanzania is quoted as having said that the people of East Africa still like the same English-oriented laws, and, perhaps, as administered by English-oriented lawyers.⁴³ Dr. Ross has made the same point in his analytical study of the legal profession in East Africa.⁴⁴ This inward-looking professionalism of the legal profession is not confined to the common law countries. It has been discovered to exist in the diverse legal systems of the European countries, the Soviet Union of Russia, Latin America and Japan, both ancient and modern.⁴⁵

Thus, lawyers seem to be imprisoned in the cocoons of their profession which force them to view planning with utter indifference. They will only tolerate it because Parliament or the law-maker has so decreed. Beyond this point, planning becomes a nuisance, if not a danger, to be checked by the legal profession. They are no more interested in the planning process than the clients they represent and whose mouths they are. If this attitude is to be liberalised towards planning it is necessary to convince lawyers and their clientele that the present criticism against it is not intended to suggest that lawyers should abandon their traditional role of protecting individual rights and interests. On the contrary, the criticism is aimed at strengthening this role by creating an awareness in the profession that not only must it advance those rights and interests but also extend it to the balancing of them with public policy of planning without which the rights and interests cannot exist in vacuo.

Much of what has been said about the attitude of the legal profession pertains mainly to its members in private practice. Apart from private

practice, there is always a demand for professional lawyers in other spheres of human activity. Government departments, local authorities, firms and companies, teaching institutions and various social organisations may all be interested in planning and development and call upon the services of lawyers. Courts and tribunals which often determine planning and development disputes are presided over by members of the legal profession. It may therefore be useful to look at planning from their view-point. Government departments and local authorities will normally require lawyers for two main reasons. They may be needed to draft statutes, regulations and bye-laws incorporating national and local planning policies and decisions. They may also be instructed to review the operation of the existing planning laws. Firms and companies need the services of lawyers to advise on investments as related to current planning laws and regulations and to challenge any official refusals of their planning and development applications. Social organisations and associations may employ lawyers for similar objects. The client-lawyer relationship continues to exist within this group of lawyers and their attitude to planning is not very much different from that of their fellow professionals in practice. They are primarily concerned with whether their different clients have the necessary powers, duties, discretions or rights as they would wish to claim. Like those in private practice, they are likely to be indifferent to the planning and development proposals except insofar as these affect those powers, duties, discretions and rights. It is possible that the three factors as described by professor McAuslan will invariably determine the extent of their legal arguments and form the basis of their submissions and advice.⁴⁶

Lawyers who teach in the law schools are also interested in producing

candidates who can be fed back into and accepted by the legal profession of their respective countries. Schools which decide to divert from the traditional law courses may be hard put to prove that their graduates are properly trained to enter the main stream of the profession. Consequently, they are persuaded and sometimes forced to teach and analyse what lawyers and judges do in practice even when this means a glossing over of the issues involved in planning and development which are not regarded technically as legal.⁴⁷ Most law schools continue to teach planning law as a minor aspect of Land Law in which the planning process hardly excites legal analysis. Judges are regarded as impartial arbiters between conflicting legal arguments. They will often confine their reasoning and decisions to the legal views expressed before them by lawyers representing opposing sides, and, as already noted, these are unlikely to have exhausted all the planning and development issues involved in the disputes. Further, an overwhelming number of the judges, especially in the Common Law countries, will have been elevated to the bench from practice at the bar and, as one distinguished academic British lawyer has said, the fact that a person has been appointed a judge does not mean that he is going to abandon the principles or notions of law which he previously held.⁴⁸

Thus, lawyers, whether in private practice, on the bench or in some other engagement, have an inclination and a common interest to preserve the purity and technicality of the legal profession and are wont to avoid considerations other than those they regard as law. This attitude seems to prevail notwithstanding that those other considerations which may be political, economic or social, predetermine the nature and conditions of the environment in which they practise. This assessment of the lawyers' attitude towards planning and development must be seen in general terms

only. In the first place, it would be impracticable to obtain the viewpoint of every lawyer in the profession and in any event, there is a great deal of a lawyer's work which has no bearing on planning and development per se. In the second place, the organisation and structure of most human societies are such that most people in society do not expect lawyers to do more than they are already doing. Indeed, it would not be unreasonable to expect criticism of lawyers who attempt to indulge in issues that are universally recognised as non-legal. At times, lawyers have been castigated for abandoning their traditional role and going into matters that call for political, social and economic judgments.⁴⁹ In the third place, there have been occasions when both lawyers and courts have preferred to promote the objectives and notions of planning and development at the expense of the purity and technicality of the law. As illustrative of the latter point, a few cases may be cited. In Associated Provincial Picture Houses v. Wednesbury Corpn.,⁵⁰ Lord Greene, M.R., conceded that the planner might know best what is good for the community and it may not be appropriate for the lawyers to make a value judgment on what he does. He said,

"It is perfectly clear that the local authority are entrusted by Parliament with the decision of a matter in which the knowledge and experience of the authority can be trusted to be of value".

In Sparks v. Edward Ash, Ltd.,⁵¹ the Court of Appeal saw it as a judicial duty to uphold the discretion of the planning policy-makers. The court argued that

"If it is the duty of the courts to recognise and trust the discretion of local authorities, much more trust it be so in the case of a Minister directly responsible to Parliament".

In Kingsway Investments (Kent) v. Kent County Council,⁵² the same court was faced with the problem of making a pronouncement on a planning permission which had imposed a mixture of valid and invalid conditions. It was submitted to the court - and there were precedents to suggest - that in such a situation all the conditions had to be considered together and if some were valid and others invalid all became void.⁵³ However, the court preferred to invoke the principle of severability by declaring the valid conditions operational thereby enhancing the notions of planning in the spirit of the enabling legislation. While it is not appropriate in this study to examine exhaustively the rationality and implications of these decisions, the same judicial liberalism can be discovered in some East African cases as exemplified by Commissioner of Lands v. S. Horra⁵⁴, Gregory v. Wilson,⁵⁵ Nairobi City Council v. Ata Ul Haq⁵⁶ and Puram Chand Many v. The Collector,⁵⁷ all of which will be examined in a later chapter.⁵⁸

However, in admitting to these exceptions, the argument that the attitude of lawyers towards planning and development needs to change is not carried any further. All that the exceptions show is that occasionally courts have been willing to show a reluctance in interfering with the decisions of policy-makers and planners when exercising discretionary powers and, the fact that the reluctance has promoted rather than hindered the notions of planning and development has been a by-product. Be that as it may, the exceptions are in no way an acceptance that the legal profession should participate fully in the planning process. The commitment of the lawyers to planning has been pleaded by McAuslan in his article referred to.

Steiner has also made similar pleas with regard to legal education

in Brazil and his comments are equally applicable to other developing countries.^{59a} Writing in the Southern California Law Review, Neal A. Roberts cites a number of American cases which show the kind of judicial involvement that is advocated in planning and development.⁵⁹ For example, in Gautreaux v. Chicago Housing Authority,⁶⁰ the public housing authority was constructing housing only in racially segregated and impacted areas. The trial court issued very particular injunctive relief, stopping all building of public housing units in segregated areas, irrespective of whether integrated sites were in fact available.⁶¹ In Tenants & Owners in Opposition to Redevelopment v. HUD⁶² the court not only declared the failure of the agency to provide adequate housing but ordered the agency to provide 1500 new or rehabilitated housing units in addition to those already planned. Thus, in both cases the courts were not satisfied with a mere declaration of the law to be implemented by the public authorities at their discretion. They went further by determining the manner in which the law should be implemented to satisfy the needs of the community. They were clearly participating in the planning process and not simply passing an impartial judgment on it as technicians of the law. In East Africa, the courts, and especially the Court of Appeal, have been vigorous in the upholding of individual rights threatened by executive policy or decision. It has been observed that in their zeal to do so these courts have

"assumed jurisdiction where such jurisdiction was obviously excluded, denied it where it evidently existed, upheld the liberty of the individual where such liberty had clearly been constitutionally taken away by Parliament...."⁶³

Yet few of these decisions could, on policy considerations, be regarded as wrong. The majority of them are decisions which a court

with interests of justice and a definite commitment to the people it serves would and should make. If these courts have pursued a policy of rendering justice in individual and isolated cases, it is reasonable to argue that the policy could be extended to planning and development matters which affect the lives of many people at all times and the consequences of which are not always brought to court because of the inability and unwillingness on the part of the persons aggrieved. Moreover, unlike disputes of individual liberty in which public authorities are normally adversaries, participation in planning and development would be welcomed by those authorities since it is in their interests that their policies and decisions be workable and receive general acceptance.⁶⁴

In East Africa urban planning and development is closely related to the national plans of economic development. Ultimately, the economic growth of the region is determined by law since it sets the norms and directs the outcome and distribution of that growth. Writing on this relation, Professor Friedman observed,

"The legal and economic systems are intertwined, but the more relevant a particular branch or aspect of law is to the economy, the less likely that lawyers as such will have much to contribute. Traditional lawyers, with traditional training, can reform and modernize what we have called 'lawyers' law'; but their efforts play a much smaller role in economic change, or modernization of society as a whole."⁶⁵

For the solution we may refer to Professor McAuslan's article in which he advocates a greater understanding by the lawyers of the roles of law and planning in society, leading to a smoother operation of the machinery of planning and a realisation that both law and planning have common objectives in society.⁶⁶

THE GENERAL PUBLIC:

The diversity in the meaning of planning has been attributed to various groups of people who, between them, define, describe, delimit and implement the objectives of planning and development. However, these groups are not necessarily representative of the community for which the said objectives are determined. In this context the word 'community' is used to embrace all the people affected or to be affected by the objectives in a given planning area. Admittedly, the community might have elected the politicians and paid for the education and employment of planners, engineers, lawyers and administrators. It is likely to have invested money in the firms and corporations which develop the planning schemes and projects. It may even be represented on organisations and bodies interested in planning and development. Nevertheless, the community's collective contribution to planning and development is limited. It has neither the will nor the power of its own to determine and direct what these people will or will not do. Like a juristic corporation it can only act through its agencies and unless those agencies are composed in a manner that admits to flexibility, originality and commitment, it is unlikely to realise its aspirations. Better planning and development is that likely to yield the greatest benefit to the greatest number of the population irrespective of what each group of people involved in the planning process regarded as better planning and development. However, that is only an idealistic view, for planning cannot be reduced into a mathematical formula of objectivity. It will always reflect the different views in the community which is by nature diversified into different groups of political ideologies,

social conditions and economic values. Consequently, the only type of planning that approximates the ideal should be that most likely to reconcile the conflicting notions of planning accredited to those groups. It follows that the planning process needs to be more representative of the community as a whole.

Currently, it is fashionable to speak of and advocate for community participation, by which is meant the inclusion of community representatives on planning and development panels, boards and commissions. So far the experiment in community participation has not been a great success for three main reasons. Firstly, the public at large has tended to be apathetic to planning problems. They have preferred to entrust the whole field of the planning process to public authorities and paid officials. Only when their personal interests are involved do they get sufficiently interested to attend public planning enquiries. Secondly, planning officials are reluctant to accept public participation which they regard as obstructive and largely politically motivated.⁶⁷ As a result, planning proposals are generally presented to the public as a fait accompli, and only rarely are they given a thorough public discussion.⁶⁸ Thirdly, there is a lack of articulate ideas from those who consent to participate in the planning process and one of the reasons for this is that planning proposals are published almost simultaneously as the invitation to the participants is extended, thus leaving them little time to reflect on the proposals. In most cases, public participation is limited by the provisions dealing with public enquiries, objectors and appeals systems. However, these systems tend to be quasi-judicial and to attract the range of the public consisting of interested parties or organised 'protest' groups whose interests do not always coincide with

those of the community at large or notions of planning. Professor Cullingworth has given an illuminating examination of this aspect of the planning process under English law and having analysed the 1968 Act, the Skeffington Report and the Coventry experiment comes to the conclusion that,

"'Town and Country Planning' has fiddled with detail. But it has succeeded neither in promoting timely action over such major features of regional development as the reshaping of the older conurbations or the building of new motorways, nor in creating a satisfactory urban landscape in newly developing areas, nor in bringing home to people in particular localities what they themselves might do to improve their neighbourhood amenities on the lines of the well-known schemes of the Civic Trust".⁶⁹

In the United States of America community participation in the planning process is said to be more developed than in Britain. This is explained by the fact that whereas in Britain there is a general "acceptance of and reliance on Government; the Americans are less trusting and the curious result is a greater degree of 'grass-roots' democracy". One of the interesting and effective types of community participation in the United States of America is known as advocacy planning in which experts and knowledgeable persons discuss and advocate for alternative planning proposals with public agencies to ensure that community interests are adequately represented and protected.⁷⁰ Community participation, whether formal or informal, direct or through systems like advocacy planning is possible and could be effective in the developed countries where the standards of literacy and education are fairly high and where both the Press and pressure groups highlight planning problems through

publication and public discussion. However, the same argument may not be suitable for developing countries like those of the East African region which lack the aforementioned qualifications and facilities. There, the solution to the need for public participation may have to take a different form. It is suggested that the lawyer can play a useful role in this field. His training, his practical experience, if any, and his ability to appreciate both sides of the argument are assets that may prove beneficial to the planning process.

It may be argued that the lawyer is already fulfilling his planning role since both public authorities and the members of the public call upon his services to represent them in planning disputes. However, as already observed, the lawyer-client relationship, which is the inevitable result of this engagement, restricts any articulated exposition of planning principles and notions. Admittedly, there have been cases when lawyers have had to consider and advocate for planning merits in planning inquiries on the instructions of their clients. However, our contention is that these merits should form part of the rational evolution of the legal profession particularly in the field of planning and development. It is suggested that the lawyer who is to participate fully in the planning process should no longer wait for planning disputes to occur. He should take part in the planning process at all its stages either as a bureaucrat or as a representative of his community and should not expect any more remuneration than that which bureaucrats and the representatives of the public in the planning process normally receive. He would participate not simply because he is a lawyer but because he is a citizen of the community who happens incidentally to be a lawyer. This may be the only way to ensure that the lawyer-client relationship ceases to have

the paramount influence on his judgment. It may also transform his whole thinking from the pure and technical 'lawyers' 'law' to the principles and notions of planning and development with the needs of the community becoming of prime importance. Nonetheless, society may still benefit for invariably he will still apply the concepts of his legal profession to the problems of planning at hand. He will cease to be an adversary and become a partisan.

SECTION (c): CHARACTERISTICS OF PLANNING

The first point to note is that planning is concerned with the future. It prescribes future development goals and activities notwithstanding that there may be instances when those goals or activities are dependant directly or indirectly on what has happened in the past. It describes objectives, the realisation of which is a mere forecast and whether such forecast will be fulfilled may depend on other factors not necessarily contemplated in the initial stages of planning.⁷¹ These factors lead to another characteristic of planning, namely, its continuous nature. Planning is a continuous process whose goals and objectives need to be modified from time to time in order to accommodate new and changed conditions whether of a social, political or economic nature. The revision of the existing plan which is necessitated by the new conditions requires the collection, examination and analysis of facts and data. Consequently, planning also involves the determination of facts and data for an accurate assessment of the problems involved and the ability to find solutions. Thus, writing on Urban Planning Law in the United States of America, Hagman points out this aspect of the planning process in the following terms:-

"To pressures for a more frequent census, for computerization of data, and for information banks. With massive doses of current data, fact determiners may be more readily able to identify goals than decision makers are to set goals..... The goals for city development may be more accurately perceived by extrapolating trends from existing data than from taking a survey of the stated goals of decision makers. The determination of where we are in fact going allows decision makers to respond".⁷²

As may be expected, every aspect of human activity or non activity within the planned area is likely to be discussed and assessed during the planning process. Everyone living, working, found or dealing in the planning area is also likely to be affected. The lawyers like the engineers, politicians, administrators, doctors, social workers and residents generally will be expected to abide by the planning guidelines. From this it may be deduced that planning is also comprehensive and multi-disciplinary. It embraces factors, activities, professions, trades and the general public. For example, land use planning with which most lawyers are familiar is not limited to the legal limitations imposed on the manner in which a landowner or occupier may use and develop his land. Nor is it limited to such matters as compulsory acquisition for a public purpose, compensation and public enquiries. In addition it involves the surveying, mapping and demarcation of the planning area. There will be a system of zoning which determines, inter alia, residential, civic, commercial, transportation, industrial and recreational centres. Further, the development of these centres may itself be defined, described and limited to the greatest detail. The Plan of the Jinja Municipality of 1960 may be given as an illustration of this statement. The plan shows a cardinal map of the Municipality with the different zones coloured differently. It provides a key to the understanding of the zoning. It then proceeds to give a general description of the objectives which guided its planners. The scheme is intended

"to control the development of the land comprised in the Planning Area, to secure proper conditions of health and sanitation, communication, amenity and convenience in connection with the laying out and use of

land; to preserve existing buildings and other objects of architectural or historic interest; to protect existing amenities and places of natural interest or beauty".⁷³

Thus, we have within this one sentence the comprehensive and multi-disciplinary nature of the Plan. Health and sanitation will lead to the construction of hospitals and dispensaries and the training and employment of doctors, nurses and health inspectors. It will also mean the hiring of construction engineers, surveyors, electricians and carpenters. Communication will involve inter alia, roads, garages, traffic bye-laws, bus hire contracts and fuel pumps and stores. Use of land will involve the examination of who owns and uses the land within the existing planning area, and whether it is adequate for the population as determined by the current census or future forecast. If the land is inadequate, it will be necessary to plan how extra land may be obtained and whether the extra land is to come from private owners or from public lands, who will negotiate and with whom for its acquisition, whether the Municipality has enough money to pay compensation or whether it may have to raise the existing rates and the procedure for doing it. Buildings of architectural or historic interest may require the expert opinions of engineers, surveyors and historians and even of constitutional lawyers. For instance, of what constitutional importance is the Speke memorial monument within the Jinja Municipality boundary?⁷⁴ It may be that a military expert may be required to assess the historical importance of the Army barracks within the Municipality, being the first military camp ever to be established in Uganda by the British. However, since military matters are the responsibility of the national government the Jinja local authority might

require the services of a lawyer to advise them on whether the planning of the area around the barracks is their responsibility or that of the Ministry of Defence.

The protection of the existing amenities may be subject to the advice of a sociologist who is able to forecast whether future trends in the population require more or less amenities. The development proposals will need the analyses to be undertaken by economists, developers and industrialists. The Jinja plan then goes on to define and describe the zoning structure of the area and to provide for such things as roads, erection and use of buildings, use of land, recreational and playing fields, special industrial buildings and specified roads. Each of these items is described in further detail. For instance, among the buildings which may be erected in the residential area zone are blocks of flats and a block of flats is defined by the scheme as,

"A building other than a Double Dwelling, Special Block of Flats or Terrace of Houses, of a minimum of two storeys in height, designed to contain exclusively more than two self-contained dwelling units and includes within its meaning the provision of such facilities and accommodation for the preparation and communal consumption of meals, as may ordinarily be required for the normal convenience of the inhabitants of the block of flats".⁷⁵

Further, the scheme will enumerate the type and standard of materials to be used in the construction of the buildings and the size and number of rooms allowed. For instance, the Kampala Planning regulations prohibited anyone from carrying on the trade of a baker in premises whose floor throughout was not of

"flags, Portland cement, asphalt, granolithic or other non-absorbent material".

Since the main purpose of planning is to direct and control development, the development itself may be provided for in the planning stages. The undertaking of development schemes and projects may be reinforced by implementation and enforcement measures such as licences, rules and the imposition of penalties against defaulters. The administration of the plans, development schemes and projects will require the establishment of bureaucratic institutions each responsible for one or more aspects of the planning process. This leads to yet another characteristic of planning, namely, co-ordination. Planning, particularly of an urban centre, requires a collective and well co-ordinated development of a whole area in both physical and environmental sense. Hence, the need to co-ordinate all the work related to the planning process. Lastly, there is in planning the need to balance planning principles with the reality of the situation as dictated by the available resources. This characteristic has been ably described by Tetlow and Goss in the following terms:-

"At all stages of policy, planning and implementation, two different but closely interconnected judgments must be applied. The first is a judgment of balance and reality, can the desired result be achieved with the resources available? The second is an optimizing judgment, a judgment of value - is the solution offered the best answer to the problem set, having regard to all the standards of value which apply? Both are present in any situation in which a decision has to be made; in different situations either may dominate. Both types of judgment certainly apply to every planning problem."76

It will be argued later that in this field too the legal profession should

have a special role to play. Hitherto, the legal profession has been occupied mainly with passing judgments on what other disciplines do in the planning process. Practising lawyers have been primarily concerned with the validity or legality of planning decisions and with whether planners, planning infrastructures and institutions operate within the existing law. The suggestion now is that lawyers become part of the planning process. They should no longer be confined to the role of outside observers but should be encouraged to participate in planning and development. The proposal is not intended to minimise the role which these lawyers play in society today. It simply means that the problems of urbanisation, urban planning and development are of such gravity that every citizen who has special qualifications to contribute to the finding of solutions should be called upon to assist. It will be necessary to formalise the proposals for bringing them into the process. In the fight against crime, in seeking solutions to all kinds of social ills, lawyers have often been included on panels and boards appointed for these special tasks. Members of the public are empannelled onto juries and assessors' committees. It would be possible to follow the same procedure in inducing members of the legal profession to participate in the planning process.

SECTION (d): TYPES OF PLANNING AND DEVELOPMENT

In his "Notes Toward a Taxonomy of Theorizing About 'Law And Development'", Galanter cites no less than eighteen contemporary American lawyers each defining, in his own way, the meaning of law in the context of development.⁷⁷ The variation in the terms and meanings used is considerable. As one reads through the passages and phrases quoted from these learned writers one finds that the words 'planning' and 'development' are used indiscriminately. They differ from development being

"judgment designation of certain changes inspired by the perceptions, values, ideologies of specific groups, but scientifically indistinguishable from a wider class of changes"

to

"a phenomenon characterizing a total society in all its aspects";

and law becomes

"not only as an instrument (or obstacle) to all kinds of development, but as the locus of a specifically legal kind of development".

An analysis of the substantive arguments discussed under that host of terms and words however shows less variation in the objectives examined. The layman may be forgiven for using ordinary terms like "boom", "advancement" or "economic progress" when describing the same phenomena of an urban environment.

The "town is well laid out: it is characterised by modern and beautiful buildings and well-paved streets" may very well be other expressions in ordinary language to describe planning and development.⁷⁸ Consequently, it would be perfectly reasonable for one to be persuaded to choose any one of these various meanings of planning and development and, preferably, one of his own, and whatever substance is discussed under his choice would most likely fit in the rest of the meanings, definitions and descriptions as expounded by the learned writers. Some of the written materials would seem to suggest that their intellectual excellence is not necessarily matched by the practical advancement of what is written about, namely, planning and development.

In his first lecture about Regional Planning and Development, Glikson poses the following questions: "Does Regional Planning then belong to Science, Technology, Sociology or the Arts? Is it an extension of Architecture or is it a development policy?" He then proceeds to answer these questions by stating that regional planning makes use of the work of all these fields but does not fit into any one of them. Each one contains vital components of Regional Planning, but none engulfs completely the multitude of its intrinsic interests.⁷⁹ Ouma Oyugi⁸⁰ provides us with another insight into other meanings of planning. His own version is that "it is a shopping list (in as much as many would not want to admit it), of future development actions to which a government aspires. They are aspirations because of their dependence on resource availability". Oyugi comes to this definition after reviewing those provided by other writers. Among these may be mentioned the following: Professor Gross sees a plan or programme as "a sequence of future actions to which a person, unit or organization is committed". He sees it as the process of "making, changing

or co-ordinating such plans".⁸¹ Summarising the opinions of many planners and theoreticians, Waterson writes,

"Planning has been defined in many ways, but most authorities agree that it is in essence, an organised, conscious and continual attempt to select the best available alternatives to achieve specific goals".⁸²

Telling⁸³ has enumerated the following as the current planning problems in the United Kingdom: the national economy, distribution of population and employment, the boom in development, the outward spread of towns, urban renewal and reconstruction, dispersal of population and industry, agriculture and countryside, mineral deposits, traffic and access problems, preservation and enhancement of amenity, and planning and economic competition. In narrow and detailed terms, each of the enumerated topics could be said to represent a type of planning. It is also possible to extend this enumeration so as to include topics such as recreation, social facilities, the preservation of water resources and the problems of pollution.

Since it has been observed that planning is comprehensive, the aforementioned topics are not the only ones to be considered, when the plan is being formulated or implemented. Implementation is likely to lead to what may be called consequential problems. Problems that arise precisely because one has attempted to solve the existing and undesirable elements inherent in these topics. For instance, when planning for the dispersal of urban population, the opportunities for work, accommodation and recreational facilities of the dispersed population need to be stressed and provided for. The problems of new towns, their physical layout and

the attractions for investment and industry will have to be considered. Hence, we might speak of physical, economic and environmental planning. The people who are to be responsible for the advancement of the new town and for the control of their planning and development must also be discussed and have jobs allocated to them. In this respect functional planning comes into focus. Notwithstanding this classification it has already been noted that planning can also be viewed from international, national, regional and local levels. There is therefore national, regional and local planning whether or not it embraces one or more or all the types of planning described herein. There may be other factors which force the planner to redefine many of the different plans mentioned above. Writing in the context of East African comprehensive planning Clark states,

"Plans, express intentions, but actual development expenditure may diverge from the plan for a variety of reasons. In the Economic circumstances of East Africa shortfalls have not occurred because of campaigns to conserve foreign exchange or because of lack of total savings and rising inflationary pressure. They have occurred, however, because of shortage of government finance and because of slowness in administration."⁸⁴

Foreign finance is a major factor in the planning and development of the East African towns and on this point Cohen has commented,

"The developing countries cannot easily secure aid nowadays unless they can show the aid-giving organisations that the development is being properly planned and that they have the capacity, local or borrowed, to help with the administration of the plan."⁸⁵

It follows that in the developing countries there may be another kind of

planning, namely planning to induce foreign aid. For this reason certain objectives in planning may have to be compromised and political pressure may be brought to bear upon the professional planner who may not be familiar with the international politics of foreign aid. President Nyerere of Tanzania, reflecting on the Five Year Plan in 1964 commented,

"We failed to clarify the position. Indeed by the heavy reliance on foreign aid and private investment envisaged in that Plan, we implied that it did not matter to us, and that public enterprise would fill the gaps left by private investors."86

One of the most comprehensive descriptions of urban planning in East Africa was provided by a Planning Mission of Nairobi in 1948. The mission's report stated, inter alia, that

"Planning is the conscious application of intelligence to national and local evolution. It is a determination not to meet circumstances as they arise but to master them with foresight. Not to meet but to forestall desperate situations. In the framing of particular plans, in the striking of a particular balance and consideration of the advantages and disadvantages of alternative sources, we need to have, above all, information. The work depends on the efforts of statisticians, meteorologists, administrators, civic surveyors - to mention but a few. From this body of expert knowledge which has been collected by different individuals and authorities and is now to be found in many papers and files, this Report has brought together under one cover the essential data upon which the community can make its decisions."87

Kendall, a former Director of Town Planning in Uganda wrote a book on his work in that country and after analysing the problems he and his department had to face, concluded

"Town planning schemes must not only keep abreast of development but must be so drawn up as to be sufficiently flexible to meet changing ideas and conditions. This is difficult to achieve and success will come only if there are adequate machinery and funds to carry out the plan, coupled with a willingness to collaborate by the general public."⁸⁸

For the Tanzanian policy of urban planning and development the current Five Year Development Plan prescribes the objectives in terms of urban development as a stimulus and complement to rural development, avoidance of unacceptable social conditions in urban areas, the restraint of the growth rate and congestion of the urban population. The growth rate is to be reduced by making rural areas more attractive. Apparently, this will act as an incentive to stop the drift to the towns. At the same time congestion in the more urbanised towns is to be reduced by a dispersal of population into the less populated towns.⁸⁹ The discussion we have had so far has been related to special problems of given countries and the definitions of planning and development have differed accordingly. It is possible however, to have an objective and theoretical description without relating it to any specific problem or country. Thus, Keeble has described the planning process as

"The art of science ordering the use of the land and siting of buildings and communication routes, so as to secure the maximum practical degree of economy, convenience and beauty."⁹⁰

SECTION (e):

PLANNING AND DEVELOPMENT AS A LAW

As the definitions and descriptions of planning and development are examined, discussed and elaborated the question to be answered is whether this is the kind of work that should interest lawyers. On one hand, there are lawyers who argue that every activity of human endeavour is susceptible to legal control and analysis. On the other, there are those who would wish to maintain the purity of law by excluding subjects they regard as non-legal and these would include planning and development. There is yet another group who are prepared to concede that there are certain aspects in planning and development which can be labelled law but the group would insist that such aspects be discussed in isolation from other aspects described as non-legal. Such an approach is likely to give a distorted view of the subject as a whole.⁹¹

Writing about "Law and Society", professor Chloros said,

"No other branch of social activity is so intensely human as the law, for no other subject invites us to consider all aspects of human life together."⁹²

He also noted that from the moment of birth to the moment of death, our lives, our well-being, our work, our relationships with others and our rights and duties are regulated and governed by law. The acceptance of Chloros's observations would imply that planning and development, being a human activity regulated and governed by law, is a subject which pertains to legal knowledge. However, such an implication would be challenged by others who are not so inclined. Professor Graveson directs attention to the debate that exists between older and newer universities

in the United Kingdom with regard to the teaching of social sciences in the context of law. He observes,

"Differences of opinion exist on whether law should properly be assigned to this area of knowledge. Some of the newer universities regard law as an aspect of the social sciences, to be treated in schools of social science. Most of the older ones reject the view that law properly belongs to the social sciences, an attitude which is based partly on a traditional distrust of social science generally and a reluctance to allow an ancient academic discipline to be contaminated by association with such newcomers as sociology, psychology and even economics."⁹³

Be that as it may, there can be little doubt that urban planning and development in its entirety contains elements of law, social sciences and of pure science. One of the arguments to be made in this study is that the legal profession should extend its services and employ its members in various aspects of planning and development which it has hitherto overlooked or dismissed as non-legal.

Presently, neither within the legal profession nor within the laity is there a consensus about what role lawyers should play in the urban planning process. The matter is further complicated by the fact that there is no precise agreement amongst the professionals and non-professionals as to what constitutes planning.⁹⁴ On the other hand, there is a strong opinion expressed by modern writers on planning that lawyers as well as other professions should play a bigger role in the process than they have hitherto done and that their attitude to planning and development law should change. The advocacy for change is not limited to the role of the lawyer in the planning process but embraces all social sciences.

Writing about the American Legal Profession, Trubek has observed,

"A small but growing contemporary literature has emerged which tries to probe the relationship between legal phenomena and those major social, economic and political changes associated with industrialization generally called modernization."⁹⁵

The learned writer proceeds to cite no less than ten major works and articles written by eminent contemporary American lawyers, all examining, discussing and advocating this kind of radical change.⁹⁶ This awareness of the need to change the traditional legal attitude from mere technicalities to concrete social needs is becoming increasingly evident in many parts of the world irrespective of political, social or economic advancement. Similar overtures have been expressed in the United Kingdom which is recognised as the earliest industrialised state and therefore the first to face the problems of urbanization and urban planning, development and control. Although the "socialization" of the legal profession in the context of urban planning law is not as advanced or radical as that of the United States of America, learned articles and public commissions' reports have appeared periodically advocating this kind of approach to the subject. McMurray's "Comments on the Concepts and Techniques of Local Planning", the articles that appear in Faludi's "A Reader in Planning Theory", McAuslan's "The Plan, The Planners and The Lawyers" and the Franks' Committee Report, among others, all advocate a different approach to the principles and techniques of planning and development.⁹⁷

In the Soviet Union, the legal profession is said to be part of the Soviet social order and therefore does not call for greater differences between law and the planning process but as Hazard and

Shapiro have indicated in their "The Soviet Legal System", the appeal for change in the attitude of the Soviet legal profession to planning is no less than in the countries of the West except that there there has been an attempt to legislate for such a change.⁹⁸ The developing countries too need to express this awareness. Steiner has proposed a model role for the lawyer in Latin America. When advocating the development of legal services within government departments in Brazil he argues,

"Through collaboration with public officials, economists, other professional men and businessmen, the lawyer can contribute to the effective translation of social and economic policies into legal norms. By participating in the planning, drafting and implementing of regulatory laws, he can help the legal system to achieve its potential as an instrument of change."⁹⁹

Similar observations have been made in India, Canada and Australia.¹⁰⁰

Recent legal literature on East Africa shows that lawyers have had very little to do with the planning and development of the region.¹⁰¹ Planning and development in the decade preceding the grant of independence to the area, was, to a great extent, influenced by the Report of the East Africa Royal Commission whose terms of reference, inter alia, included the following,

"Having regard to the rapid rate of increase of the African population and the congestion of population in certain localities, to examine the measures needed to achieve an improved standard of living..... with particular reference to the introduction of better farming methods, adaptation of traditional tribal systems of tenure, the opening of land not fully used, the development of industrial activities, conditions and growth of large urban population and the social problems which arise from the growth of permanent urban and industrialized populations."¹⁰²

The Commission did not include a single lawyer in its membership nor was any of the numerous comments following the publication of the Report and published in diverse journals such as Corona, East African Economic Review and the East African Geography Review, written by a lawyer.¹⁰³ Professor Allott has also pointed out the fact that all recent commissions of inquiry concerned with the economic development have had no lawyers amongst their members.¹⁰⁴ Yet, as it will be discussed later, urban planning and development in East Africa is so closely linked with the national economic policies that the examination of one without the other can only be partial and unrealistic.¹⁰⁵

As urbanization increases in the developing countries and the solution of urban planning and development becomes more urgent, the debate about what lawyers should contribute will become more heated. The preface to the Wisconsin Law Review of 1972 whose entire issue of No.3 is devoted to Law and Society in Developing Nations has highlighted the principal issue involved in this debate. It opens with the following passage:-

"Whenever a government establishes policies and guidelines for change, it spells them out in laws. Thus, law is becoming the medium in which development occurs, and throughout the world, lawyers are discovering an altered legal system. Once counsellors and adversaries, lawyers are finding new roles as drafters, advisers and bureaucrats. But like any institution the legal system does not easily adjust to new roles - nor should it do so until the political and theoretical underpinnings of its new responsibilities have been explored and evaluated..... Vitally needed now are theoretical bases upon which lawyers can build conceptions of the relationship of law and development. For without such structures, legal problem solving will be haphazard at best....¹⁰⁶

But there are other reformists of the legal profession who would like to

see the role extended so that lawyers can participate in determining what the Review calls "political and theoretical underpinnings"; for unless they do so participate the likelihood of rejecting their new role looms in the background since they will not have determined that role. Assuming that this new premise receives general acceptance, the lawyer's work will no longer be confined to drafting documents and legislation or appearing before courts and administrative agencies on behalf of clients. He will be called upon not only to design reforms of his profession and legal institutions to suit contemporary society but also to participate actively in the formulation of policies for which the profession and those institutions are designed to serve and promote. He will thus cease to be a mere technician and in the words of Holmes, the American jurist, become a social engineer. The line of demarcation between what is purely legal and what belongs to businessmen, engineers and bureaucrats will become smaller. The lawyer will no longer sit back to wait for instructions from his clients since he will be expected to be his own client as a member of a community tackling the task of planning and development.¹⁰⁷

The next point that needs examination is what exactly are the aspects of planning and development which concern the legal profession. Currently, when a planner is mentioned, the word connotes the surveyor, engineer, geographer, sociologist, an economist and perhaps an administrator.¹⁰⁸ These are the people who determine and reallocate land for planning and development. They make plans and authorise the development of planning schemes and projects. In some countries, especially in the developing world, it is the same group of people who may draft, implement and enforce planning and development measures. In East Africa, moreover, it is from the same people that any citizen aggrieved by a planning decisions may seek assistance. They are the ones likely to

inform him as to the extent and rationality of compensation offered for the compulsory acquisition of his piece of land. They are the ones likely to explain to him any claims he may have against anyone or any penalties he may incur against public authorities or private individuals in relation to land interests and planning regulations.

In other words, they have the power and function of determining the rights, duties and liabilities of the individual in the context of land use planning and development. On the other hand, the traditional legal conceptions suggest that such matters ought to be determined by the legal profession whether in the form of courts, legal representatives or advisers. Consequently, it may be reasonable to describe what these people do in practice as work which ought to be done by lawyers and therefore as pertaining to law. The traditional lawyer may accept the view that the work ought to be done by lawyers but at the same time may be reluctant to describe the decisions of non-lawyers as law. It is possible that he will argue that lawyers are concerned with statutes, legal concepts and principles as passed by legislators and interpreted by judges and lawyers in courts, tribunals, or discussed in law chambers and law journals in legal form and that anything decided outside these venues by persons other than lawyers or law-making agencies of the state cannot be law within the proper meaning of the word. A legal discourse is expected to state legal principles, to discuss relevant statutes and decrees and to analyse judicial cases. To be recognised as pure law, the decision needs to be expressed in legal technical words and its reasoning needs to be supplemented by the annotation of numerous statutes, regulations, rules, cases, ratio decidendi and opinions of eminent lawyers. This point may be illustrated by two hypothetical cases. X, a landowner,

applies to the planner for permission to develop his land in accordance with a given planning law. The planner rejects the application on the ground the X's proposed development is not authorised in the particular planning zone. X accepts the decision and no more is heard about the application. Y, his neighbour and another landowner, also applies to the same planner for similar permission to develop his own piece of land. The application is rejected on precisely the same ground. Y instructs his counsel and the matter is argued before a judge of the High Court. The judge dismisses Y's action by the same reasoning as was given by the planner.

As far as lawyers are concerned the law on this particular matter is exemplified by the judicial judgment in Y's case and few of them are likely to be concerned with X's case. In reality, the practicability of this planning law is likely to be illustrated by X's case since the majority of landowners whose applications are rejected by the planner are unlikely to file court proceedings. Speculatively it can be argued that an examiner of a law essay on planning is likely to be more impressed with the citation of Y's than X's. Such a choice puzzles a layman since both cases have the same effect and ideally both should be cited without making a distinction between legal and non-legal decisions. The end result of both fact-situations is that the legal rights of X and Y and the legal duty and power of the planner have been determined. In the case of Y this has been done by the application of the traditional legal approach whereas in the case of X it has been done with the application of planning and administrative principles. Since planning and development decisions involve the consideration of traditional legal principles and planning and administrative principles it is inevitable that any legal discussion of

the subject must embrace all these principles.

This approach is more commendable in a region like East Africa where courts are rarely resorted to on urban planning and development questions and yet, where statutory law is in full operation as applied, implemented and interpreted by large bureaucracies of mainly non-lawyers.¹⁰⁹ In both the United States of America and England there is a wealth of decided cases, Ministerial regulations and local bye-laws or state laws dealing with planning and development. On almost every aspect of the planning process there is some regulation or judicial pronouncement.¹¹⁰ On the other hand, the legal profession in East Africa is not so endowed. Many of the statutes which provide for Ministerial regulations or local bye-laws have never been invoked in courts of law and many of the planning and development disputes on which Americans and Englishmen resort in courts have never excited East Africans to take the same course.¹¹¹ But even in cases where they would have liked to do so, the aggrieved parties have neither the inclination nor the means of engaging into court litigation. To a legal researcher brought up under the English system of case law, this dearth of legal authority presents a dilemma, for his training emphasized the use and analysis of judicial precedent.¹¹² There are a number of alternative courses open to him when he undertakes to write on urban planning and development of a region not known for its litigious nature in respect of that particular subject. In the first place, he may choose to analyse the statutory regulations as they appear on the statute books. His authorities will be the various sections and provisions of the relevant Acts, bye-laws, regulations and rules. It is submitted however, that such an exercise would be futile for he might as well have reproduced the statutes which in any case are already well typed and

bound on the orders of the government and other public bodies.

As a second alternative, he may decide to analyse the statutory provisions and, because he lacks local decided cases, cite cases by way of analogy, from other legal systems, which are relevant to the points of his discourse. However, this course is not satisfactory for two main reasons. It distorts the legal process as applied to the area of his study. There is no reason to think that faced with similar problems, the local courts would follow or indeed be impressed by the foreign decisions he has cited. Moreover, he would be attempting to do a comparative study of the subject when one was not contemplated in the first place. A third alternative would be for him to select only those areas of planning and development in which he has discovered availability of decided cases applying and interpreting the various provisions of statutes, regulations and bye-laws which would enable him to produce a traditional legal thesis. While this course may lead to a technically acceptable exercise it fails on two counts. Firstly, it will lead to a fragmented view of planning and development. Secondly, it will assist neither the reader nor the practitioner to appreciate what actually happens in real life.

Finally, he may decide to approach the new field with an open mind. He knows that his topic is the entire planning and development law of the area and this must be exhausted whether or not there are decided cases on every matter to be considered. Where the law exists he will analyse and discuss it and where it does not he may suggest the course to be taken by examining all the surrounding circumstances, including the consideration of what other countries do in similar situations. It is submitted that to discuss the creation of a new law to suit a situation

is no less legal than the discussion of the existing law on that particular situation. He is unlikely to succeed unless he can examine what the planner and those engaged in planning and development do from day to day and how they do it. It is immaterial that both the legislature and the courts have not passed a judgment on what these people do, since, as we have seen, what they do affects and determines the rights and duties of the individual which the law strives to create and protect.

He may suggest that public inquiries should precede the exercise of powers of compulsory acquisition. The fact that the present law contains no provisions for public inquiries and therefore there are no cases available on this matter does not lessen his legal argument or put his discourse beyond the realms of the legal profession. One advantage of taking this course is that the researcher will be able to use examples from legal systems of other countries not because he is technically forced to do so, but because he believes or thinks that their introduction in the subject of his study would be practical and beneficial and would add breadth to the field of planning and development as understood and practised in his area. In other words, he is freed from the illogical choice of cases and statutes for the sake of appearing legalistic.¹¹³

A plea for change in the attitude of the legal profession towards the planning process is not necessarily a plea for the abandonment of the well-established principles of law. On the contrary, it is an invitation for the re-examination of those principles which are capable of being strengthened and reinnovated so as to accommodate novel ideas and unique problems of human development that have emerged since the establishment of those principles. As has already been observed the plea embraces all the social sciences and there does not appear to be any justification for

keeping law as the only 'pure' discipline. Writing on the 'Role of the University in an Underdeveloped Country', Colin Leys has argued that hitherto university education has been largely indifferent to the problems of development. He has explained that this phenomenon is based partly on heavy reliance on expatriate staff and partly on the training of local scholars. The following passage is quoted from his article:-

"In some cases this can be explained by the fact that until very recently they have been predominantly staffed by expatriate Western academics who were often insufficiently aware of the existence of the problem. More seriously for the long run, it may also be the result of the predominantly Western training of the local staff who have been succeeding them, and their heavy professional orientation towards the West, with its tradition of the "purity" of academic scholarship."¹¹⁴

Ley's suggested cure is that in the university of the underdeveloped country, the touchstone of what is taught ought to be its bearing on the understanding of the predicament which underdevelopment represents.

In his book "Freedom and Socialism", President Nyerere re-echoes the same sentiment when he remarks that university scholars cannot pursue pure research and knowledge for its own sake without neglecting other functions which are for the time being more important. President Nyerere's statement can be explained further by saying that the danger is not in doing 'pure' research per se but in the ulterior motive for doing it.

The reasons for doing research have been described as being of two general kinds.¹¹⁵ Firstly, there is the intellectual reason which is based on the desire to know and understand for the satisfaction of

knowing or understanding, and, secondly, there is the practical reason which is based on the desire to know for the sake of being able to do something better or more efficiently. The investigations to which these two types of research lead are sometimes labelled pure or basic and applied research. Sometimes they are discussed as if they were opposed or mutually exclusive and, not infrequently, as if one were better than the other. In fact this contrast is fallacious and misleading. Historically, the scientific enterprise of research has been concerned both with knowledge for its own sake and with knowledge for what it can contribute to practical concern. Therefore what one needs to ask for is the relevancy and the practical nature of research to planning and development.

Professor Ilukor, a physicist at the University of Makerere, Kampala, observed at a recent conference that an East African science scholar is likely to obtain a highly commendable Ph.D by analysing the nuclear warhead of the superpowers instead of devising the commercial use of the sunrays in the tropical countries. The predicament that faces a scholar selecting to do research on the commercial use of cosmic rays of the tropical sun is that he is unlikely to find and cite similar studies undertaken and credited to eminent scientists of the West or the developed countries and therefore his work may not be sufficiently 'scientific' or 'pure' as to merit the desired award of his chosen university. In substance, however, the latter study would be more useful and certainly more relevant to the development problems of the tropical countries than the former.¹¹⁶ Galileo who is said to have represented the ideal of the committed scientist might have approved the latter project since he is reported to have said that the purpose of science is to ease

the hardship of human existence. It is interesting to note, however, that although praised for his other scientific truths, Galileo is criticised by modern 'pure' scientists for having made that statement and few of them make the point that it might have been because of his subjective and practical approach that he is accredited with scientific achievements.¹¹⁷

The narrow and pure professional approach to research is not confined to law in the developing countries. Economists aspire to write articles that will be accepted by the Western Economic Reviews. Engineers feel uncomfortable about teaching students not to design roads to the standards in use in the countries where they themselves received their doctorates.¹¹⁸ Meanwhile lawyers strive to write legal articles which will be accepted for publication in Western law journals and reviews and in order to succeed they will write in the style and manner to which the readers in those countries are accustomed. In applying for academic posts, scholars in the developing countries may find that the important question is not what they have published but where they have published, not what use it is to the local community but what eminent scholars in the developed countries have said about it. There is some danger in this approach to scholarship and research. The desire to be published in the developed world means that with a few exceptions, the articles must be of such substance as will appeal to the readers, the majority of whom are in the country where the publishing takes place, and who may not be interested in the planning and development problems of the country on which the articles are written. The temptation in the articles to make comparisons with the problems which are familiar to the readers becomes great and as a result distortions and superficiality occur.

It is suggested that the obstacle to radical thinking about the planning and development of the developing countries can be overcome by a combination of two factors, namely, the emergence of ideological and material support in the developing countries and a significant change of outlook in the professions of these countries. Whereas the nucleus of the new professionalism should ideally be founded in the developing countries its nurture will call upon the professions of the developed countries to appraise and give constructive criticism as well as making allowances in their insistence on the 'purity' of the professions, if only because the professions of the former countries continue to rely on the latter for aid, advice and scholarship.

At a recent seminar held for the graduates and staff of the London School of Oriental and African studies the role of lawyers in planning and development was discussed.¹¹⁹ Among the points made were the following; that members of the legal profession are already participating in planning and development in that they usually draft planning legislation, represent parties to planning disputes and occasionally sit as members of planning tribunals. It was further stated that judges hear and determine planning appeals. Some of the participants in the seminar were of the opinion that to expect lawyers to do more would be inviting them to become bureaucrats and administrators. The theme of this study is not that the lawyer should derogate from his primary duty of protecting the interests of the paying clientele, but that additionally his talents could be used to benefit the general public in the field of planning and development. What his precise "brief" is likely to be is examined fully in the last chapter of this study.

PART II: PERSPECTIVE OF THIS STUDY

SECTION (a): AVAILABILITY OF MATERIALS

Much of the literature written on planning and development has been produced by non-lawyers.¹²⁰ In the United Kingdom and most of the Commonwealth, few, if any, of these authors mention lawyers as contributing anything to the planning process except in so far as they make representation on and determine the law under which that process is to be maintained.¹²¹

Cullingworth's "Town and Country Planning in Britain"¹²² may be taken as an illustration. The book is fairly 'comprehensive' about planning and development in the United Kingdom and discusses the following subjects:- the evolution of Town and Country Planning, the new Agencies of Planning, The Role of Central Government, The Legislative Framework, The Local Planning Machine, Planning and Land Values, Amenity, Protection of the Environment, Planning for Leisure, New and Expanding Towns, Urban Renewal, Regional Planning, the Planners and the Public and an appendix entitled 'Some Illustrative Appeal Decisions'. In spite of the formidable list of subjects discussed hardly any members of the legal profession, whether draftsmen, practising lawyers or judges, figure in the text. When discussing the evolution of planning the author mentions a number of statutes. But these are treated in a general manner with little attempt to examine legal implications. In fact, they are treated in the Kelsenian style of the 'grund norm'. In a text of over three hundred pages only two court cases are cited at pages 85 and 303 respectively.¹²³ The author has provided a considerable wealth of references to books, reports, journals, reviews and papers, at the end of every chapter. There are more than five hundred numbered references and only

about forty of these are apparently legal works. It would have been reasonable to assume that the appendix of selected appeals would at least contain judicial appellate decisions, but none of them is. They are all appeals heard by a Minister.

On the credit side, Cullingworth has examined and discussed most Parliamentary debates, public inquiries, reports, Royal Commissions Reports, expert opinions of traditional experts in planning, the techniques and mechanics of planning and developments as expounded by everyone save members of the legal profession. Cullingworth is dealing with practical planning; authors of theoretical planning are even less concerned with the role of lawyers in planning and development. For example, there is very little that pertains to law in McLoughlin's "Urban and Regional Planning"¹²⁴, not even in his chapter entitled 'The Guidance and Control of Change: Physical Planning as the Control of Complex System'. Similar observations could be made on Fuladi, John Tetlow and Anthony Goss, Ashworth, Chapin, Foley, Jackson, Kendall, Senior, and Webber just to mention a few.¹²⁵ Planning and development journals and reviews seem to follow the same trend.¹²⁶ Once one becomes familiar with this kind of writing analysis one asks oneself what Professor Chloros meant when he said that law embraces all aspects of human life together until one reads the counterpart works on the same subject written by lawyers.

Although there are relatively fewer planning and development materials written by lawyers than by non-lawyers, the styles, attitude and evidence as well as the reasoning resorted to are so remarkably dissimilar that a visitor from outer space might be misled into believing that there were two entirely different sets of planning and development on earth. The legal treatise is likely to be founded on the examination of statute, discussion of decided cases, analysis of legal opinion and

little else of the other aspects of the subject. It will rarely refer to policies, techniques and practices of the traditional planners. Like the non-lawyer the legal author will take the planner for granted.¹²⁷ Like the Kelsenian grund norm, the latter exists and there is no necessity to examine or analyse him or the manner in which he acts. The lawyer simply analyses the planner's action as presented to him in order to see whether it fits within a given rule of law and if not what legal consequences may follow. For a fair comparison, Telling's "Planning Law and Procedure" may be taken as a good illustration. The book is about the same size as Cullingworth's "Town and Country Planning in Britain",¹²⁸ which has already been examined. Both books examine more or less the same topics in planning. Telling also discusses, inter alia, the following subjects: Planning Control, Basis and Objects of Modern Planning Laws, Central and Local Administration, Development Plans, Definition of Development, Planning Permission, Special forms of Control, Highways, Inquiries, Compensation and Acquisition of Land. The author cites no less than 107 decided cases on planning and procedure. There is a reference to a statutory provision or court decision on nearly every page of the text. He gives six and a quarter pages of statutory provisions referred to in the text. There are less than thirty references to materials of non-legal nature and none of these refers to any major works of planning and development. While the author refers to parliamentary debates, Commissions of Inquiry and the analysis of planning law by legal experts there are no specific discussions of what planners do in practice.

Taking a smaller volume on the subject of planning, this time, Charlesworth's 'Planning Law',¹²⁹ - a mere 159 pages of text - we find that

the author has cited no less than 29 court cases and examined or referred to statutory provisions to cover more than five pages of small print. But again no specific use has been made of major works on planning prepared by non-lawyers. Lawyers have written or compiled books on Local Government and Administration and on Property. Occasionally these books contain relatively fewer pages on planning and development compared to other topics covered. In each case those few pages are crammed with planning judicial decisions and analyses of Legislation but very little of the practices and opinions of administrators and planners. The reverse is the case when those books are written or compiled by administrators and planners. Anyone not familiar with the planning process and reading legal works on it might imagine that most planning decisions are determined in Parliament and the courts. Similarly, one reading works written by non-legal experts might believe that the courts have very little to do with planning and development. Yet, an analytical examination of the process reveals that while only a small fraction of planning disputes ever go to appellate courts and tribunals the decisions reached in a judicial manner have considerable influence on what administrators, planners and policy makers do subsequently.

Thus, we have people actively involved in the same process and perhaps working for the same objectives but failing, through professional attitudes, to recognise one another as contributors. It has been necessary to dwell on planning materials available in the United Kingdom partly because the planning process as practised there has been and continues to be applied to East Africa and partly because the professional attitudes of East Africans are similar to those of the United Kingdom.¹³⁰ For example the Kenyan engineers' and surveyors' associations are mere

branches of those which exist and operate in Britain.¹³¹ Moreover, whereas there has been considerable writing about the planning and development of East Africa by administrators, planners and economists lawyers have yet to become sufficiently interested in the subject before they can produce learned articles and books about it. There have been occasional papers written by lawyers and presented at international conferences but in the main planning and development as a subject for lawyers is still at the embryonic stage.¹³² Of the books and articles written by non-lawyers none has been conscious of the role played or to be played by lawyers.

The first conference to be held on Town Planning in East Africa was in 1956 and the papers delivered at that conference have been compiled into a small book. Writing a forward to the book, Kendall said,

"During the first visit to East Africa of Mr. P.H.M. Stevens of the Colonial Office in November 1955 some discussion took place in Kampala on the advantages of initiating an annual conference of Town Planners of the East African territories. It did not take long to reach the conclusion that such an annual gathering of technical officers with similar problems to solve should produce beneficial results to the public and to the authorities concerned with the development centres in East Africa..... Planning legislation also needed a comprehensive review and Mr. P.H.M. Stevens agreed to give a paper containing such a general review."¹³³

Surprisingly no legal officer or practitioner seems to have been invited to the conference even though there was to be a review of planning legislation in East Africa. Mr. Stevens, who undertook the responsibility,

was not a lawyer but a planning officer in the Colonial Office and a member of the British Planning Institute.

Nevertheless, Stevens's paper can be commended for its excellent analysis of planning legislation in Anglophonic Africa. It is when it comes to discussing the role of courts and lawyers in the planning process that the author's thesis becomes brief and non-descriptive. Little is said about lawyers generally and the comment about courts appears on page 22 of the book where in discussing planning appeals the author remarks, *inter alia*,

"There is controversy over which method should be adopted, but there can be no doubt, and in this I am supported by the opinion of High Court judges, that a court of law is not competent to determine matters which are solely matters of Government policy and that, providing that powers exercised as an expression of that policy are within the powers granted by statute, then the decision of the ultimate planning authority should be final."¹³⁴

While Stevens's statement may be accepted as a general proposition of courts' attitudes to administrative discretion there are so many other aspects of that attitude which might have required enlightenment from lawyers. There were other matters discussed at the conference involving legal concepts and principles expounded by members of the legal profession. Since then, there have been periodic conferences and meetings among East African planners, but still without the presence of lawyers. Conferences and meetings of the East African Law Societies have similarly been attended exclusively by members of the legal profession.

There are three institutionalised forums in East Africa where

opportunities for joint multi-disciplinary discussions on planning and development exist. These are the East African Community, the East African Academy and the East African Universities Social Sciences Council.¹³⁵ The former arranges conferences and meetings from time to time to be attended by international and national officers and experts in planning and development. The latter hold annual meetings at which papers on planning and development are read and discussed by academics and practising professionals. Unfortunately, the disciplines at these meetings are isolated so that members belonging to one meet on their own and discuss papers and topics purportedly belonging to their group. Geographers, political scientists, sociologists, lawyers and engineers, each group to their own conference room. Yet, the geographers, the sociologists and lawyers may be discussing separately papers of common interest touching on such subjects as urban planning and its problems, manpower planning or slum clearance. The only times the participants ever meet together is at the opening and closing of the conference, at meal times and when they occasionally chat at the local bar. It is only long after the conference ended and all the papers and recommendations have been published that members realise the opportunity they missed in not attending groups other than their own.

At the last Social Sciences Council Conference held at Makerere University, one contributing member found difficulty in convincing one of two disciplines that he should present his paper to their group. As it happened, the professor who was a sociologist, had written a paper entitled 'Criminal Deviance' and as soon as the sociologists glanced at it they advised him to join the Law group. Many of the lawyers who read through the paper before its discussion expressed grave misgivings about

its legal content. They were surprised that the author's supporting evidence did not cite statutes nor discuss judicial precedents. In the end the Law group decided reluctantly to listen to him presenting the paper. To the amazement of many traditionalists, the paper and the discussion that followed turned out to be one of the highlights of the law group discussions. Some time later when the papers had been published and members had had an opportunity to read them, the professor and head of the Department of Sociology expressed his disappointment that he and his colleagues had been deprived of the opportunity to attend the discussion of the paper.¹³⁶ From this example it may be deduced that part of the problem of getting everyone participating in the planning process is founded on the preconceived ideas of what a particular profession or discipline should project to the world at large. Professional conservatism leads members to project the form and mannerisms of their profession rather than the substance. It is not uncommon within the legal profession to have 'injustices' perpetuated because of legal technicalities or because of following judicial precedent. Under the old common law forms of action litigants obtained or failed to obtain remedies, not because of the substance of their claim but because of the form of their claim.¹³⁷ Engineers may reject an alternative choice of building a residential block of flats or designing a certain bridge cheaply because such a novel idea has never been heard of within the profession. It follows that the engineers, the lawyers, the administrators and sociologists are minded to follow the pursuits, practices and attitudes of their respective professions unless they are convinced that if they divert from the accepted standards or practices the profession will applaud rather than renounce or condemn them.

The use of interdisciplinary studies may be illustrated by a

contrast between two Reports compiled for the Kenya Government.¹³⁸ The first report was made about building standards while the other was about rent control. The reports have been chosen for four main reasons. First, the circumstances and conditions under which the two subjects were studied are common to the three territories of East Africa. Second, one working party was composed exclusively of planners and administrators whereas the other consisted of members representing all interests including government, local authorities, engineers, tenants, landlords, lawyers and businessmen. Third, although the terms of reference for both parties appear to be similar the methodology used and the subsequent recommendations are entirely different. Fourth, of the three East African countries, Kenya has tended to have more formalised and frequent working parties, commissions and research panels concerned with the problems of planning and development. It is perhaps appropriate that the composition and terms of reference be set out first. The first Working Party consisted of the permanent secretary to the Ministry of Labour and Housing as Chairman, and the deputy Director of the Medical services, the Chief Architect in the Ministry of Works and two other administrators as members. The terms of reference issued to the party were determined after concern had been raised with regard to the standards set for building residential and commercial property which were said to be too high. The party was "to examine the question of building standards, bearing in mind the recommendations of the Dow Commission". The second Working Party consisted of a practising lawyer as chairman, a councillor, a government representative, persons representing landlords and tenants, developers, an academic and members of the general public.

The terms of reference issued to the party were determined after

concern had been raised with regard to the undesirable effects of uncontrolled rent. The party was to inquire into and report on the desirability of reintroducing rent control measures and to consider, inter alia, the suitability of the Landlord Tenant (Shops) Ordinance of 1956 which had been repealed in 1962.¹³⁹ According to their report, the first Working Party set out to examine the recommendations of the Dow Commission and the Government's reaction to those recommendations. Then they looked at the legislation imposing standards of building construction in Kenya and examined the attitude and practice of the Central Housing Board. In the end and without any further investigation, the party selected one of the recommendations in the Dow Commission Report and adopted it as their recommendation to the Government. This was to the effect that there should be three zones of building, namely, areas where high constructional standards should be laid down, others where those standards should be modified to make cheaper building possible and areas in which there would be little regulation of building standards beyond the requirements of health and possibly, safety. The party went on to discuss the advantages and disadvantages of their chosen recommendations and to suggest how the disadvantages may be minimised. Ultimately, a reader of the Report is left with the impression that the party might as well have been asked to pass judgment on the Dow Commission Report and certainly there was little new that the Government could not have discovered on its own by studying the Dow Commission Report and other available materials and data. Much of the substance of the latter part of the Working Party's report is little more than the beliefs and theories of the planners and administrators who composed the membership.

The second Working Party opens its report by revealing that the members "wrote memoranda to any person or organised group wishing to

make representations and took oral evidence from both landlords and tenants and from leading citizens from many walks of life. Others were invited to give evidence because of their special experience and knowledge of the problems of rents." The report includes the names of persons and delegations who gave oral evidence or submitted written memoranda. The party also expresses its disappointment at the poor response from certain areas of the country and mentions Nakuru, Kitale, Nyeri, Nanyulo and Meru in particular. It points out the amount of general apathy experienced in some places visited. In spite of the disappointment and apathy, the party was still able to report that,

"Numerous letters and memoranda were received from both the tenants and the landlords. Many tenants also completed questionnaires supplied by the Working Party. Hundreds of people some of whom came in large groups and others who came individually gave oral evidence. We found that almost all tenants were unanimous in favouring some form of rent control. The majority of landlords did not favour any form of rent control. The Working Party have recorded arguments without regard to merit or validity."140

The party then proceeds to summarise all the arguments for and against rent control and the proposals for reform obtained from the people and organisations that communicated with the party. The Working Party went to considerable lengths in discussing these proposals. They examined expert opinions and analysed the operation and effect of rent control legislation. Political, economic, social and legal consequences of the proposals and the legislation were given similar treatment.

After a thorough examination of the subject, the Working Party concluded that according to their assessment of the evidence received rents in Kenya were not exorbitant. They only seemed so because of

risers in other commodities and the construction charges in the building industry. They had found several cases of unscrupulous landlords and ignorant tenants who made it possible for certain rents to be increased suddenly and frequently but these cases did not justify wholesale legislation for the control of rents. The party did however recommend the re-introduction of the Landlord/Tenant (Shops) Ordinance, 1956 with certain amendments for the protection of small traders. The party proposed and drafted the amendments and the express and implied terms of a contract for a lease. They also proposed the establishment of a rent tribunal and suggested how this might be composed and what could be its powers and jurisdiction. Lastly, they recommended the introduction of a Rent Book and drafted its form and contents.

It is obvious from the two reports that the first party was as superficial and general as the latter was thorough and detailed. The conclusions of the first report appear to be founded on insufficient evidence and a minimum of searching investigation and its credibility depends upon the faith the Government has in the members of the Working Party. On the other hand, the conclusions of the second report and their credibility are based on fact-situations and practical experiences as observed and ably analysed by the Working Party. It is interesting to note that neither report contains more than 20 pages and yet one is so much more evidenced than the other. It is perhaps not surprising that whereas the Government decided to implement the one on rent control it found it necessary within five years to invite an international Mission to investigate and recommend on, among other things, the same problem investigated by the first Working Party. From the examination of the two reports it may be reasonable to argue that the manner in which a

planning team is composed may be as important, if not more important than the planning proposals contemplated.

Recently, an attempt was made to incorporate the concept of interdisciplinary approach to the "Role of Urban and Regional Planning in National Development". A seminar on this subject was held in Kampala in 1970 and as Safier observes,

"The participants..... were drawn from Government Ministries, Municipalities, Universities and other institutions, and came from ten countries, though the large majority were from Tanzania, Kenya and Uganda. The participants were from many disciplines and backgrounds - economists, agronomists, physical planners, engineers, administrators, geographers and others - and one of the most effective aspects of the seminar was the friendly confrontation and interaction of such a diversity of people. Though this is of course impossible to capture on paper, the focci (sic.) of the Discussions.... may give some impression of the common ground that was readily established."

None of those listed among the participants at the Seminar is described as a lawyer and yet many of the topics discussed contain such obvious legal questions that the inclusion of lawyers in the Seminar might have been of benefit to the participants.¹⁴¹

The study of urbanization, urban administration, mechanics and procedures in land use planning and housing contributes to the understanding of urban planning and development. Urban planning and development determine the urban environment of any given community for they relate to its nature, character and the well-being of that community and involve such considerations as the ownership and use of the land in relation to the population which in turn determine the way that community

behaves, its inhabitants' work and life in the urban setting. Each of these topics may be divided into several sectors of specific studies. For example, urbanization is likely to involve the collection and analysis of demographic data, the discussion of the reasons why urban centres grow more rapidly than the surrounding rural areas. This may in turn lead to the analysis of political, economic and social factors which predetermine national and local policies of urban planning and development.

Land use planning will entail the examination and evaluation of the size, ownership, control, use and development of the urban land, the people who are responsible for these functions; the consideration of comprehensive and specific plans; the role of strategic and functional planning and the rationality and technique of zoning the planning area. Zoning itself will involve, inter alia, the allocation of residential, commercial, industrial and recreational areas within a given planning area and the manner in which each of these zones may be developed. Power must be given to some authority to ensure that the plan is adhered to but also to exercise some discretion so as to ensure flexibility and fairness. Much of this can be described as physical planning but in its widest sense planning involves other considerations. For instance, one of the aims in planning is to promote the health and economic advancement of the inhabitants.¹⁴² Consequently, the plan needs to cater for the housing, sanitation, recreational and transportation needs of the population. The needs will not be adequately provided for unless they are carefully related to the demographic data and to the capability of the nation and the people to construct, manage and pay for them. For this purpose, it will be necessary to examine and provide for

such matters as housing policies and projects, the establishment of health regulations and inspectors, the relationship between authorities and users of these amenities, landlords and tenants, and vendors and purchasers. The implementation of planning and housing development projects will necessitate the expenditure of money. Hence, it is important that there should be fiscal policies concerning investments and the establishment of workable and effective relationships between borrowers and lenders of the required money. Taxation laws and regulations related to urban properties and investments, the levy of rates for those properties and the cost of maintaining them are matters of great importance also when considering a workable urban plan.¹⁴³

In discussing planning goals and the various relationships among the people concerned with urban planning and development it is also necessary to consider certain other issues which, though not directly relevant, may in one way or another affect the planning process or influence planning and development projects. Among these may be mentioned the manner in which policy-makers operate and the forces which exert pressure on their decisions, the relevance and impediments of the existing laws, the technical capabilities of local planners and bureaucracies, the influence of foreign aid, models and experts, the inducements to and willingness of investors and developers and lastly the economic and political strength of the people affected by or benefitting from planning schemes and development projects.

A great number of the principles, ideas, goals, factors and relationships which have been enumerated and discussed in the context of urban planning and development are susceptible of legal analysis; but a number of them fall outside the traditional realm of the legal profession. However, even with the latter category, it is possible to argue that the

legal profession needs to be knowledgeable about them since its own role in the planning process is more often than not influenced, if not determined, by the thinking and acts of non-lawyers making decisions on those subjects, *mutatis mutandis*.¹⁴⁴ Although our primary concern is the examination of the role of law in the urban planning and development of East Africa, it will be necessary from time to time to make specific references to this relationship as it exists in other countries. References will be made to other developing countries particularly insofar as their own urban problems and solutions, if any, are similar to those of East Africa. References will also be made to some developed countries to discover how they reacted when faced with similar problems.

Of special interest to this exercise is the urban planning and development laws of the United Kingdom and United States of America. Five main reasons may be given for choosing these two countries among those of the developed world. Firstly, the East African planning and development laws are mainly colonial legacies from the United Kingdom and in spite of considerable amendments and revisions of those laws their substance remains essentially British. It will therefore be interesting to examine the operation of such laws notwithstanding that they operate and have continued to operate under different conditions and environments as represented by Britain and East Africa. Secondly, both the United Kingdom and the United States of America continue, under various foreign aid and technical assistance schemes and projects, to provide East Africa with machinery, equipment and personnel for the planning and development of its urban centres. Consequently, it will be useful to examine whether notwithstanding such aid, East Africa has been able to avoid copying the planning techniques and experiences of these two countries.

Thirdly, an overwhelming number of the East African planners, bureaucrats, advocates and policy-makers was and to some extent continues to be, trained in the two countries. A study of British and American planning processes and the manner in which their respective professions handle matters pertaining thereto may lead to an interesting discovery of whether these are reflected in the urban planning and development of East Africa. Fourthly, there are, within both the United Kingdom and the United States of America areas of economic depression which national governments and local or state authorities are endeavouring to develop and as the editorial comment of a recent issue of the Wisconsin Law Review observed,

"Despite our tremendous economic power, the United States still harbors pockets of under-development within its borders towards which the attention of this and future generations must be directed..... Exposure to the operation of law in different social contexts both broadens the perspective from which to search for solutions, and, correspondingly, expands the range of solutions from which to choose. Hence, by examining others, we discover more about ourselves."145

Lastly, it is nowadays conceded by planning experts that problems of urbanization are almost universal and that solutions to them are likely to be found if they are studied in the context of world planning and development. Prevailing needs in and attitudes about urban planning and development must be examined at regional, national and international levels. The successes and failures observed elsewhere may lead to a reappraisal of the situation at the local and national level. Modern supranational institutions and state interdependence have meant that a country has often to look beyond its own territory to discover solutions

to its domestic problems. Nationalism gives way to international knowledge even though the selection of such knowledge needs to be made with care so as to ensure its relevance and suitability to local conditions and circumstances.¹⁴⁶

SECTION (b): THE REGION OF EAST AFRICA

Since the discussion of urban planning and development of any region can neither be meaningful nor apprehended except in terms of its area, physical features, demographic, economic and social characteristics, these factors need to be mentioned in the context of East Africa. The region of East Africa consists of the Republics of Kenya, Tanzania and Uganda. The three territories form a land block that lies between the great lakes of Central Africa and the Indian Ocean and cover an area of 642,728 square miles of land and 38,901 square miles of water. Uganda, the smallest of the three territories, is about the same size in area as the United Kingdom. Kenya is more than twice the area of the United Kingdom and Tanzania which is the largest of the three is four times as large as Uganda or a little larger than the Republic of France.¹⁴⁷ Although when compared to the larger countries of the world East Africa is small - being about one-fifth of the whole area of the United States of America - its size is still considerable and the distances between its urban centres are extensive. Presently, the combined total population of the region is estimated at 35 million people which is slightly more than half the population of Nigeria, the most populous state on the continent of Africa.¹⁴⁸ Of this population of 35 million only five per cent can be described as urban. Thus, compared to many parts of the world and some regions in Africa, East Africa has one of the lowest levels of urban population in relation to the total population of the region. The bulk of the urban population is concentrated in the three capitals of the region, namely, Nairobi, Dar es Salaam and Kampala,¹⁴⁹ and because these cities, more than any other, have often attracted the interest of

planners and because it is there that the greatest urban planning and development has taken and is taking place, greater attention will be given to them in this examination of the region's urban planning and development.

The East African towns are set in locations and serve hinterlands whose physical conditions, climates and peoples differ greatly. While the Equator almost bisects the region into two halves, suggesting a uniform tropical climate, there is nevertheless every variety of physical feature to operate against this uniformity. Describing the phenomenon of the region in 1955, the East African Royal Commission observed,

"From the permanent snows of Mount Mero and Kilimanjaro to the hot humid coastal belt, as from the arid deserts of Kenya's Northern Province to the lush parklands of the high plateau, climates vary greatly, ranging from tropical rainy to tropical desert and to the moderate climate of the tropical highland areas. Rainfall varies from about 5 inches in parts of Kenya's Northern Province to about 50 inches in the coastal belt and the Lake Victoria basin, and to as much as 100 inches in some of the mountainous areas."150

East Africa can claim to have more inland Lakes than any other comparable region. Lake Victoria, the third largest lake in the world, is shared by the borders of the three territories. A number of these lakes are to be found in the two great rift valleys, one of which runs along the western side and the other along the middle of the region. Several of these lakes are below sea level. Africa's highest mountains are also to be found in this region. Mount Kilimanjaro, (19,565 feet) is on the Kenya-Tanzania border, Mount Meru, (14,979 feet) is in Tanzania and Mount Kenya, (17,058 feet), is in Kenya. Mount Elgon, (14,178 feet) is on the Uganda-Kenya border and Mount Rwenzori - "The Mountains of the Moon" - with its

16,763 feet Margherita peak is on the western border of Uganda.¹⁵¹

East Africa may be divided into four main physical regions, namely, the coastal belt, the coastal hinterland plain rising to about 200 feet above sea level, the main East African plateau and the Lake Victoria depression. Of the three capitals mentioned above, Dar es Salaam can be said to be representative of the first two regions, Nairobi of the plateau and Kampala of the Lake Victoria basin.

SECTION (c): THE PEOPLES OF EAST AFRICA

The peoples of East Africa may be divided into three main categories. First there are the coastal people, a mixture of Arabs and Swahili who can be said to have lived in some sort of urban centres for a long time. Secondly, there are the people of the plateau, the highlands and the Lake Victoria basin who have always been traditional agriculturalists and whose urbanization is a relatively new experience, starting mainly with the coming of the Arabs and Europeans.¹⁵² It is perhaps this group which forms the majority of urban dwellers in East Africa, especially those living in towns of which both Nairobi and Kampala are representative. This is mainly because it forms the overwhelming numbers of the region's population and tends to dominate the civil service and other public bodies which contribute large numbers of town dwellers. Lastly, there is the cattle-keeping and nomad group of the savannah plains which is the least urbanized.¹⁵³

As already observed, only a small number of the region's population is urbanized. This can be explained on several grounds. Firstly, it was never the tradition of the inhabitants to found or live in cities. Even in areas where there were traditional kings as in Uganda, or powerful tribal chiefs with the possibility of attracting large numbers of people to the centre, the small dwellings of individual families remained the permanent place of residence with the family members working on their landholding and occasionally visiting the king's or chief's enclosure whenever he desired their services. Secondly, compared to other countries, East Africa is not highly industrialised so as to attract large numbers of workers to the towns. Thirdly, the region is predominantly

agricultural. It is estimated that today, Kenya's agriculture provides a livelihood for more than three-quarters of its population, contributes 35 per cent of its national revenue and earns more than half of its export revenue. The figures for both Uganda and Tanzania are, four-fifths, 60 per cent, 85 per cent; and four-fifths, 50 per cent and 90 per cent, respectively. The three important agricultural products which are responsible for these earnings are coffee, cotton and tea, and they are produced in all three territories.¹⁵⁴ Besides these there is tobacco, sisal, groundnuts and pyrethrum grown and exported in varying amounts from the region. Except in Kenya where there are to be found farms on an extensive and large scale, most of these crops are grown on small-holdings scattered all over the countryside with long distances and sometimes impassible tracks from one holding to another, thus making it almost impossible and uneconomic to provide modern services such as water, electricity and roads.¹⁵⁵

The tradition of the African extended family coupled with the desire of town dwellers to keep in touch with their own people has to a considerable degree meant that East African urban dwellers have maintained a link with the countryside and many of them do live on the land at least part of the time. The link has often been criticised as being detrimental to urban planning, especially in the accurate forecasting of urban employment and housing needs. Nonetheless it is also conceded that it provides an important social security system and an element of stability for both the urban and rural dwellers.¹⁵⁶

A realistic examination of urban planning and development law must also take into account the historical, political and economic factors of the region it is intended for. Failure to do so is likely to render the examination theoretical without being relevant and general without being

precise. For this reason it is necessary to look at the East African region in these terms. From numerous and fragmented tribal communities the region came under European occupation which reduced it to three distinct countries within one decade. German rule was declared over mainland Tanzania in 1885 and British rule over Uganda and Kenya in 1894 and 1895 respectively. Following the defeat of Germany in the First World War, mainland Tanzania was mandated to the United Kingdom by the then League of Nations and from that date until independence in the early 1960's Britain administered them jointly. Although they remained separate states, for all intents and purposes they were treated as a federation. For over 50 years, East Africa has shared common services such as railways, telecommunications, posts, harbours, and until 1966, a common currency. Over the same period there evolved economic co-operation among the three countries.¹⁵⁷ This was given impetus on June 6th, 1967, when the Heads of State of the three countries meeting in Kampala, signed the Treaty for East African Co-operation, establishing an East African Community and a Common Market rather on the same principles as the European Economic Community of which the East African states are associate members.¹⁵⁸ The principal aim in establishing the community was to strengthen and regulate the industrial, commercial and other relations of the partner states, so as to achieve,

"an accelerated harmonious, balanced, and sustained development to the economies of the three countries and to share equitably in the benefits accruing from this development."¹⁵⁹

Under the Treaty, the partner states are to share in the location of the community's offices and services and of any establishment of new

industries. It follows that in the planning and development of her own urban centres each partner state must take into consideration the requirements of the Community. Occasionally such consideration may mean that the particular state has to compromise or change its own internal law to accord with those requirements.¹⁶⁰ An interesting case touching on this very point arose in Uganda in 1969. The Uganda Land Transfer Act prohibits any transfer of land or grant of a lease in land owned by an African to a non-African without the consent of the chief of the area in which the land is situated and the approval of the appropriate Minister. An African is defined as a person who is indigenous to East Africa and by this definition Europeans and Asians are excluded even if they are East African citizens by birth or registration. Excluded also are any corporations or firms whose membership includes one or more non-Africans. The East African Community is defined by the Accession to the Treaty laws of the partner states as a corporation. In 1969, the Community acquired land from an African with the intention of constructing buildings thereon. The Registrar of Land Titles demanded that the Community must obtain the necessary consents since at the time the Tanzanian Cabinet included a European and an Asian minister. He argued that the the Community, being a corporation composed of the East African governments which included non-African ministers, was not an African within the meaning of the Uganda Land Transfer Act and therefore could not be registered as the proprietor of the land without the requisite permission. Unfortunately this novel point never came to court for after negotiations between the Community counsel and the land registrar the matter was referred to the Uganda Cabinet which ruled that in future cases, as in this one, the Community would acquire land without the necessity of seeking permission either from the chiefs or from the relevant ministers.¹⁶¹

Besides the common political and economic goals which East Africa has shared there are other matters which come into this category. For instance, the region's administrative structures and educational systems have always been remarkably similar.¹⁶² Until the military coup d'etat in Uganda in 1971, the constitutional provisions dealing with such matters as the role of government, both central and local, land and urban structures, were more or less identical in the three countries. From the colonial nomenclature of municipalities, towns, councils and land committees to the post-independence cities, councils, land Boards and planning committees the three countries have often tended to follow one another in their laws.¹⁶³ From the election to the appointment of urban and district councillors, from executive urban planners to advisory planning experts, the region has shared common causes. Shared also has been the cosmopolitan nature of towns in East Africa with the minority races of European and Asian origins dominating the commercial and superior residential centres of urban centres against the overwhelming majority of the indigenous inhabitants occupying the poorer areas and having little say in how these towns should be planned and developed. This state of affairs persisted until in Tanzania the government introduced the Arusha Declaration and in Uganda the military government summarily expelled most of the non-Africans.¹⁶⁴

The East African elite who have since independence dominated and controlled the planning and development of the urban scene have had a similar educational background and inevitably share the same ideas as to how the towns of the region should be planned and controlled.¹⁶⁵ During the colonial times, Makerere University College was the seat of higher education in East Africa that produced many of the present leaders

and administrators in the area. The professional engineers, surveyors, doctors and lawyers throughout East Africa went to the same universities, colleges and institutions in East Africa and overseas.¹⁶⁶ It is true now that their respective governments appear to be following different policies of political, economic and social change, but as professionals and technicians, whatever they learned and shared together as students will inevitably show in their work whether they are designing highways and streets, building residential quarters or constructing Ujamaa villages.

Another important common factor to be found in East Africa as in many other developing nations is the acute poverty of the majority of its urban population. The poverty is such that even when public authorities have designed and built modest houses for the low-income groups living in the towns only a very small proportion of them can afford the rent demanded; and fewer still may afford the purchase prices to own their own houses. This means that while the growth of urban population increases the poor majority will continue to look up to the governments for work and shelter and a considerable share of the national revenue must of necessity be spent on urban planning and development, at any rate, within the foreseeable future.¹⁶⁷

SECTION (d):

URBAN DEVELOPMENT VERSUS RURAL DEVELOPMENT

Since the degree of urbanization in East Africa is extremely low it may be questioned whether urban centres and especially urban planning and development law related to them deserves the attention being advocated in this discussion. For a number of reasons the answer must be in the affirmative. In the first place, the population patterns of the region are changing rapidly. The urban population is growing much faster than the total population of the area. While the average growth rate of the latter is about 3 per cent per annum that of the former is about 6 per cent.¹⁶⁸

The three capital cities of East Africa present a phenomenal rate of growth of urban populations in the developing world. Kampala which is the smallest of the three provides an excellent illustration of this growth. In 1926, its population was estimated at a mere 4,000 people. By 1930 that figure had doubled. The census returns of 1959 give the population of Kampala as exceeding the 50,000 mark. Ten years later and according to the census of 1969 the population had reached the figure of 330,770 people. Admittedly, this included people who had been brought into the city's jurisdiction by the extension of its boundaries in 1968, but nevertheless this growth is startling by any standards. In 1948 the population of Nairobi was 118,976 people. In 1962 the population had almost doubled and was 226,794, and by 1972 had become 589,000 with a growth rate of 7 $\frac{1}{2}$ p per cent per annum. The population of Dar es Salaam in 1957 was estimated at 140,000. Ten years later, in 1967, that figure had more than doubled to become 300,000 people and in 1972 the population was estimated in excess of 500,000 persons. In their current structure

plans the three cities have allowed for populations in excess of more than one million by the late 1980's and of more than several millions by the year 2000. Some experts believe that such estimates for each of these cities are slightly low.¹⁶⁹ The same trend is to be discovered in the majority of other urban centres of the region even though their combined growth rate is slightly below 5 per cent per annum and therefore less startling than that of the three cities.¹⁷⁰ The implication of this growth is that East Africa is likely to be having the same urban population figures as those available in the developed and wealthier countries of the world in a matter of decades rather than centuries. Today, however, the region is already experiencing the urban problems of those countries in terms of rising crime, congestion, unemployment and lack of housing and social service amenities. Consequently, unless the region can begin to plan for these problems now it may be unable to cope with them even on an ad hoc basis particularly when it may still be handicapped by shortages of manpower and economic resources which are necessary for managing, planning, developing and controlling its urban environment.

In the second place, the urban centres provide a lifeline to the rural dwellers. The town may be a home to the urban dwellers but to the country people it is a market for their produce and a shopping centre. In East Africa all the big hospitals, educational institutions and major centres of any description are to be found in towns. If they happen to be administrative centres as well, they are likely to contain the major political and economic institutions of the country and invariably, the major national policies are decided there too. In almost all countries, the city is the centre and symbol of modernisation. One writer has described

the main cities of Africa as:

"The intellectual and social capitals, the seats of governments, the main foci of political activity of all sorts, and the economic capitals of their respective countries, the major transport centers, the major financial nodes, and they contain the bulk of the newer market-oriented manufacturing establishments as well as a considerable share of the raw-material oriented plants. Indeed, one of the notable characteristics of many African countries is the rapid fading away of the signs of modernity as one leaves the urban centers."¹⁷¹

Because of these characteristics, the urban centres hold a magnetic attraction for all manner of men. Foreign visitors consider them as stopping places on their journeys through the country and as haunts for souvenirs. To the unemployed, to the opportunists and to the criminals the city offers jobs, deals and opportunities. Because of its fascination and attraction, the city finds itself with a large population whose problems it can hardly cope with. The ever-increasing urban population creates problems of expansion, planning and housing, and employment. The population distribution affects the political, social and economic policies of integration and increases the pressure on demand for urban land which in turn influences the costs and difficulties of providing adequate social and economic infrastructures.¹⁷² Thus, the planning and development of urban centres is not confined to the needs and aspirations of the people who live in them. Important as this may be, they must also be considered in terms of what role they play in the life of the whole nation. Even in a developed and relatively wealthy country like the United Kingdom it has long been acknowledged that what the city of London does often has repercussions throughout the land.¹⁷³

In the third place, it is a fact that the overwhelming number of lawyers, whether in private practice, government or corporation employment or in academic posts, do live and work in urban centres.¹⁷⁴ If the proposition that the legal profession has any contribution to make to the development of these nations is valid then nowhere is it more appropriate for it to begin than the places where its members live and work. For if lawyers fail to participate in the planning and development of areas in which their personal interests lie it is reasonable to assume that such failure would be even greater in areas devoid of such interests.

In the fourth place and lastly, urban planning and development in East Africa have created a different kind of challenge which does not obtain in the rural and traditional environment. The traditional village with its scattered and simple homesteads does not require the same professional and financial commitment as the urban centre demands. More often than not the villagers know one another and perhaps belong to the same family or clan and most likely speak the same language. They are able to assist each other in self-help projects and because their number is small they may afford to live without modern amenities such as street lighting, water supplies and main drainage. On the other hand, the urban centre is essentially cosmopolitan and crowded. Neighbours do not normally come to the aid of one another and the said amenities are absolutely essential if risks to health and life are to be avoided. To make this point is not to argue that the development of the villages is irrelevant or unnecessary. In fact making villages more attractive and economically viable may be of great benefit to the urban centres in that such measures may reduce the number of people who are attracted to the towns.¹⁷⁵ The point is simply made to show that given the limited resources of East Africa, priority

for planning and development needs to be given to urban centres if only because the problems of urbanization already exist and unlike those of the villages, cannot be shelved indefinitely. It is also arguable that whereas rural problems of development are capable of indefinite duration those of the urban centres cannot be so without a breakdown in law and order, leading to chaos whether political, economic or social. It is also a fact of the modern state that urban populations, because of their numbers, education and sophistication, are more able to demand certain services from their governments and public authorities and to harrass those which are unable to provide those services, sometimes making it difficult for them to govern or carry out their other functions. This being the case, it is submitted that greater attention ought to be given to their problems and if this can legitimise the position of those in power it is likely that they will find time and opportunity to turn to the proplems of rural development.¹⁷⁶

It is because of the reasons discussed above that the laws which govern urban centres in East Africa and their planning, social, economic and political affairs assume an importance of the greatest magnitude and surpass those intended for rural areas notwithstanding that the latter contain the greatest number of the population. However, before these matters can be discussed it is useful to examine the Land tenures and Laws which operate in the territories of East Africa.

CHAPTER TWO: LAND LAW IN EAST AFRICA

PART I: INTRODUCTION AND CUSTOMARY LAND TENURE

Section (a):Introduction

Although there are many factors to be considered in planning and development, the first and basic commodity is land. Consequently, the law which governs the nature and use of the land is of equal importance. The examination of the East African Five Year Development Plans since Independence and the analysis of planning and development comments by planners and administrators show a close relationship between land law and development planning.¹ Often the planners plead for the reform of land legislation to enable them to carry out their planning duties and functions more efficiently and implement development schemes and projects more cheaply.² The Plans will usually indicate that the Governments intend to propose alterations and amendments for the reform of land legislation so as to accord with the wishes of the planners. In practice, however, neither the pleas of the planners nor the intentions of the Governments appear to demand the same priority or such detailed studies as other aspects of planning and development. This phenomenon is not peculiarly unique to East Africa. Other countries like Nigeria, the United Kingdom, India and the United States of America, experience it too.³ It is also interesting to note from the contents that most books and articles written specially about urban planning and development do not always discuss the question of land law in any great detail. In fact almost all omit it as a topic deserving special examination except insofar as it is

incidental to what they consider to be planning and development issues. For example, Hagman's "Urban Planning and Development Control Law", Heap's "An Outline of Planning Law", Haar's "Land Use Planning", McLoughlin's "Urban and Regional Planning", Charlesworth's "Planning Law", Telling's "Planning Law and Procedure", and Safier's "The Role of Urban and Regional Planning in National Development of East Africa",⁴ among others, do not examine the influence of land law on the planning process. Two reasons may be put forward to explain this omission. First, land is one of the traditional law subjects which have attracted considerable written examination in the past. It therefore tends to be ignored since it is said to be sufficiently immortalised in so many other books.⁵ Second, we have already noted that an overwhelming number of the materials written on planning and development is credited to non-lawyers. It is not surprising therefore that it should continue to be regarded as outside their own fields of study.⁶

Nevertheless, the feasibility and success of the planning machinery and development programmes depend upon the availability of land and the ease with which it can be acquired for development. For this reason it becomes necessary to consider land ownership and its usages as determined by the law of the land and the attitudes of the people who own, use and occupy it. This necessity can be elaborated by a number of examples and illustrations. Urban planning and development needs to be financed. One of the sources for such finance is the rates and taxes imposed on owners and occupiers of urban land and property. It follows that the ownership of the land and the property coupled with the attitude and influence of the owners may determine the wealth

of this source. For instance it has been observed that,

"Absence of technical knowledge, undue influence or a desire to avoid unpopular decisions which may cost them their seat in the next general election very often leads to a reduction in assessment (of rates and taxes) with subsequent loss to municipal revenue."⁷

From this it may be argued that it is desirable to examine the law of land ownership if such a course might lead to the reduction of undue influence on tax assessors or make the assessment less related to political elections as for example, by creating appointed instead of elected officials. The current Uganda Five Year Development Plan notes that land tenure practices affect the development of urban housing and the family's ability to secure mortgage financing.⁸ The current Kenya Plan notes that physical planning is concerned with development which involves the use of land. It then enumerates five main tasks of the Town Planning Department as (a) zoning to minimise the cost of municipal engineering, (b) to facilitate the movement of people from home to work, schools and shops, (c) to reserve areas of land for commercial facilities, (d) to prevent the wasteful encroachment on agricultural land and (e) the expensive extension to urban services caused by unplanned urban sprawl.⁹ It will be seen that inherent in each of these tasks is the necessity to understand the mechanics and effect on land of the existing law. The same consideration extends to industrialization. Discussing the location of industries in Kenya, Gitao¹⁰ has observed that although Kenya is relatively less urbanised, a very high proportion of the total of manufacturing industry employment is concentrated in the urban areas and in particular in Nairobi and Mombasa. It follows that the ownership and control of land in urban centres is more important than in rural

areas and is of vital importance in the consideration of planning and development policies. This same observation is applicable to all other major towns in East Africa.

The importance of appreciating land law as a pre-determinant of planning and development policies and measures cannot be over-emphasised. Stevens observed that in the then Northern Rhodesia, now called Zambia, a well planned and deserved development project failed to materialise because of land legislation policies. A developer made a proposal to make an investment in the colony worth more than a quarter of a million pounds. This was a highly desirable development. However, the relevant land legislation at the time prohibited such development in the area in which it was sited. The authorities were anxious that the development should be implemented and decided to amend the law. Unfortunately the procedure to do so could not be legally gone through before the expiration of three months. The developer became impatient and could no longer wait. He therefore moved his scheme to another part of the country.¹¹ In Motibai Nanji v. Khursid Begum,¹² an agreement had been entered into by the appellant and the respondent whereby the latter had agreed to exchange her absolute ownership of some urban land with rural land. The appellant wished to develop the urban land in accordance with the then existing outline scheme of the municipality. The respondent's rural land was a lease from an African owner and the relevant statute prohibited land deals between Africans and non-Africans without special permission of the Governor. Both the appellant and the respondent were Asians and their agreement concerned land owned by an African. The appellant lost his appeal for an order of specific performance

and the urban centre lost a development which had been planned and for which permission had been obtained. It is submitted that had the planners and the developers in this case studied the appropriate land legislation, a lot of time and money could have been saved. In Miranbux v. Lule¹³, Smith J. held that,

"Any portion of land in Buganda which has been held as Butaka under the Uganda Agreement, 1900, to a member of the clan will be regarded as subject to the customary rights of all the members of the clan and cannot be sold."

Similar decisions were reached in M. A. Singh v. S. W. Kulubya¹⁴, Manji v. Begum and Kakungulu V. Sekiunga Estates¹⁵. The principles pronounced in this series of cases show clearly that planning and development proposals cannot be implemented unless they conform to the existing rules of land law. In addition, concern must be had toward the availability and cost of land for, notwithstanding the scarcity of population in the whole region, urban land in the towns is increasingly becoming smaller for all the developments and what is more, "land prices are high and rising."¹⁶ For these reasons we find it necessary to examine the incidents of land ownership and holding in East Africa and to describe the various policies and attitudes of the inhabitants to land use.

Section (b): The Systems of Customary Land Tenure

Before the establishment of the British colonial administration, land in East Africa was governed by rules of customary law. The extent to which these rules differed depended on the social structure, traditions and customs of a particular tribe or tribes belonging to one ethnic group in the region.¹⁷ However, in spite of the many tribes inhabiting East Africa, three basic systems of land tenure may be identified as having existed before the colonial rule. The systems followed the type of

political set-up any particular tribe had evolved for itself. The first system prevailed in those regions which had traditional and hereditary rulers or kings. The second system was to be found in regions where there were no kings but the people enjoyed some kind of central administration through powerful chiefs or clan leaders. The third system operated in areas with no central authority or where none of the chiefs had enough authority to command the following and loyalty of the whole tribe. It will be necessary to examine briefly each of these systems.

Typical of, but by no means identical with the first system was the land tenure which existed in the Buganda kingdom of Uganda. Notionally, all the land in Buganda was owned by the Kabaka or king. Anyone holding land in the kingdom did so at the Kabaka's pleasure. There were three kinds of landholding in Buganda, namely, clan ownership, official estates and individual tenancy. Though least in size, clan ownership was the most important in Buganda and the Kabaka himself did not interfere with it, considering that his ~~pr~~ right to the stool depended largely on the consent of the clan heads. Traditionally, the people of Buganda are divided into clans, each of which is identified by a symbolic name of an animal. Every clan has a clan leader, known as the Omutaka, the plural of which is Abataka. The Abataka are the guardians of the clan's customs, traditions and ancestral homes and tombs. Besides rendering certain ceremonial services to the Kabakaship, the Abataka settle disputes of a customary nature amongst the clan members, including the determination of land and inheritance rights. Each clan has within Buganda an area of land which has always

been regarded as clan land or Butaka. Every clan head occupies Butaka on roughly the same principles as the English entailed estate owner. 'He may not dispose of or alienate the Butaka. The notions of Butakaship were explained and noticed judicially by Guthrie Smith J. in the case of Miranbux v. Lule where he said,

"There have been from time immemorial certain areas called Butaka and associated with one of the clans . . . This land could not be taken away from the clan . . . That was the universally understood custom . . . such a custom being certain and reasonable, and for the benefit of a section of the public, namely the clan and having been enjoyed since time beyond the memory of man has the binding effect of law." 18

Moreover, every clan member, wherever he might be, has a customary right to bury any deceased relative in his clan land. The clan head had to be confirmed by the Kabaka after being selected by members of his own clan. Constitutionally, all the clan heads formed the college for the approval of the Kabaka's succession to the Buganda throne. Because the Kabakas were so much aware of the importance of clan heads they assumed the honorary status of Ss-bataka or the father of all clan heads. This status enabled the Kabaka not only to exercise general supervision over clan heads, but also to evict them if they neglected or abused their responsibilities as Alipo Kabazi v. Jemusi Kibuka¹⁹ and Stanislas Mugwanya v. Lui Sensuwa²⁰ clearly indicated. The clan land is sacred and the most important aspect of it is the ancestral tomb. It may only be used for cultivation and building houses for the clan head and his family or those to whom he has leased it.

The second category of landholding within Buganda was the official estates of the chiefs. The customary administration of the Buganda kingdom was perhaps the most sophisticated and

developed throughout Central and East Africa before colonial rule. The system was feudal in character and was founded on a hierarchy of greater and lesser chiefs, all of whom were appointed and dismissed by the Kabaka. At the centre of the administration were the greater chiefs, the Regents who assisted the king in discharging the functions of the Treasury, the Judiciary and Royal ceremonies. Then the country was divided into counties known as Sazas, over which the great Saza chiefs presided. These were assisted by lesser chiefs at the next division known as gombolola and the miruka chiefs down to the village head. Each of these chiefs, great and small, was entitled to a certain portion of the land within his jurisdiction to be held ex-officio under the Kabaka's royal prerogative. This kind of land tenure was known as Obutongole. On the death or removal from office of the chief, the land went to his successor in title who was not necessarily his heir at law, since chieftainship was not necessarily hereditary. Nevertheless, the chief might have leased the land to his relations or given licence to other people in the area to cultivate it, in which event they remained in occupation subject to the necessary dues and loyalty to the new incumbent. Buganda was an over-administered kingdom and as may be imagined *official estates constituted* the largest part of the country. In addition, there were royal estates reserved for the Kabakaship and royal persons. As some of the Kabakas were notoriously promiscuous and illegitimacy did not carry with it the same stigma as today, these royal estates were equally numerous and extensive. No tenant or user of land could exercise a right of occupancy or cultivation unless he was prepared to be subservient to the overlord chief. Sub-

servience involved not only giving loyalty but also the payment of certain dues and the rendering of onerous services to both the chiefs and the Kabaka, at the chief's command.²¹

The third concept of landholding in Buganda was based on personal claims which materialised either through long occupation or through confirmation of holding by the Kabaka or his agents. Any land which was neither clan land nor Butongole could be occupied by anyone who was later able to claim ownership by prescription. Although customary law did not fix the time for prescription, in practice the claimant had to show that he had been living on the land for some considerable time and that his possession was not successfully challenged by his neighbours. Mukwaya gives another method by which this kind of holding could be acquired:

"Both chiefs and peasants who had some access to the king availed themselves of some opportunity to have a permanent claim to one particular piece of land recognised. It was common for a chief early in his career to choose one holding for his personal use as distinct from the holding in his official use." ²²

Occupation by prescription or grant was less extensive than official estates, but economically it was more valuable in that the owner was free from the traditional duties of clan headship and the political pressures of the official estate owners, and more importantly, his land was both inheritable and alienable.

The second kind of land tenure was to be found in regions which accepted communal ownership of land. The land belonged to the whole tribe or clan with the council of chiefs acting as trustees and guardians of the land for the members of the tribe or clan as the case may be. The tribe claimed the land to the exclusion of other tribes or individuals. The members of the

tribe had a mere right of occupancy. The occupancy lasted as long as the land was under cultivation or was being positively cleared for such cultivation or was waiting for another crop in the process of crop-cultivation. In the event of there being a dispute about the right of occupancy the chiefs, assisted by the elders of the area resolved the matter. There were areas within the tribal land where cultivation or settlement was not allowed. These included grazing, ceremonial and hunting grounds. Sale or leasing tribal land could only be effected with the consent of the council of chiefs and elders. For instance, in Nathani Anaya v. Wilson Kafuna and Eyalia²³, the Court of Review held that the sale of land in North Nyanza among the Abaluhya tribe could only be valid if the customary law of obtaining the formal consent to such sale by other members was obtained.

The third system of land tenure existed in the non-kingdom, non-chieftainship districts of East Africa which did not possess central authorities. Although the clan was still the most important unit even in these districts, every family head was the land authority within his family. He settled wherever he wished and used the land in any manner he preferred subject to common rights of way, grazing and ceremony. But for all intents and purposes the head of the family owned the land as if he were a proprietor of freehold under English law. On his death, the land would be distributed among his relations in accordance with local custom. Moreover, there was no bar against alienation to members of other tribes and as a result of famine and other natural scourges the members of the latter would emigrate to those districts and beg to be given land on which they could settle and cultivate. The consequence is that these districts possess some

of the most fragmented pieces of land in individual holdings. It is also a characteristic of these areas that they tend to be agricultural, overcrowded and cosmopolitan.²⁴

In spite of the existence of different kinds of land tenure in East Africa, there are certain common attitudes to land among the inhabitants which prevail not only in East Africa but throughout black Africa where customary law operated. Whether the land was owned by the king, council of chiefs or the individual, what the chief of Ijebu-Ode said about land would appear to be generally acknowledged. He said,

"I conceive that land belongs to a vast family of which many are dead, few are living and countless members are yet unborn."²⁵

In Gwanobi and others v. Alidina Visram²⁶, the members of the tribe argued,

"The land belongs to God, and cannot be sold either by an individual or by Elders of a tribe, and the right to use the land is common to all members of the tribe. On the other hand individual ownership is recognized in the results of an individual's labours on the land. That is to say, he can sell trees planted or inherited by himself and he can sell the right to make use of a clearing prepared by him for the cultivation of short crops, but in neither case can he convey any title to the ground on which they stand or which has been cleared for cultivation."

Thus, customary law recognised the usufructuary interest vested in the occupier but not his ownership of the land. The question of land ownership in Africa under customary law has aroused great interest among academic scholars. Some of these scholars have had their views analysed or expressed in such publications as Land Law Reform in East Africa, Denning Law Society Journal, East African Law Today and a number of issues of both the Journal of African Law and the East African Law Journal.²⁷ Obi summarises this question when he states that,

"The truth is that every legal system allows to individuals and groups certain rights and interests in and over various forms of property. The quantum of these rights and interests varies with the nature of the subject . . . Where the maximum bundle of rights and interests allowed by the law is in the hands of the same individual or body that person or body is said to own the subject matter in question."²⁸

Writing on customary land tenure in Kenya, Maina²⁹ says,

"Land Tenure in the African tradition is a very complex problem involving a variety of attitudes and long established codes. At one extreme there are tribes like the Masai, and other pastoral peoples, which control large areas of land as common property under the customary law . . . At the other extreme some tribes have recognised for many years individual rights to land. . . . The Kikuyu, for example, have for generations recognised a form of outright family ownership of arable land although they have always regarded grazing areas as communal."

However, this view would seem to be contradicted by Njega's observations in the journal of the Denning Law Society.³⁰

Examining customary Land Law in Tanzania, Hamersley argues that,

"There is considerable variation in such customary tenurial practices, the foundation of all being usufructuary rights or the right of a man to a piece of land for as long as he uses it. The degree of sophistication which pertains in different areas depends very much on the concentration of population."³¹

On the other hand, both President Nyerere and Professor James³² seem to differ from this approach in their reasoning and interpretation of the Tanzanian customary law of land. Kato has supplied us with yet another definition of ownership as understood in Ghana. Apparently there it is said to denote, sometimes,

"What is, in effect, absolute ownership, at other times it is used in the context which indicates that the reference is only to rights of occupancy or in accordance with the relevant Native Law and custom in the area concerned."³³

In spite of the fact that the Buganda customary tenure was relatively longer established before the advent of the colonial

administration and in spite of its attraction to scholarly writers, the interpretation of its notions has always varied not only among expatriates like West, Gutkind, Read and Hyden but amongst indigenous writers such as Nkambo-Mugerwa, Mukwaya, Obol-Ochola and Butagira.³⁴ We shall therefore add to these different views of ownership our own definition which describes it as the right or bundle of rights to use a particular piece of land for shelter, subsistence, or economic gain to the exclusion of others without the payment of any dues or rent. It is immaterial whether this right is vested in an individual, clan or tribe or whether it is absolute or dependent or indeed whether it is for life or inheritable.

Apart from ownership there is the question of whether customary land law recognised planning and development. We have stated that the right of prescription was exercisable on condition that the claimant had entered and occupied the land. Obviously, one could not claim a virgin forest without showing evidence of cultivation or building huts or growing recognised plants. In effect prescription was dependent on development of the land.³⁵ One of the incidents of tenure in all the systems described herein was that the occupier of the land maintained public paths passing through his land and public wells as well as all the other spaces dedicated to the general public. In the event of water wells drying up during droughts or grazing grounds becoming exhausted both the chiefs and elders of the tribe or clan called meetings to plan for alternative lands and grounds. The merits and demerits of alternative choices were invariably discussed at public meetings. Penwill refers to this development when he writes,

" . . . It is invariable and established practice that he must be allowed to take his planted annual

crops, be given reasonable time in which to move, and be paid for any improvements he has made on the land - unless the landlord can show that he publicly stated his disapproval of these improvements being made, in front of the local elders before the work was begun."³⁶

Among the Kamba, anyone may hang his honey barrel anywhere in any tree in unoccupied land provided that it is not already taken by some other person. Thereafter, no one else may hang his barrels in that particular tree without permission or do any act likely to disturb the bees. The right to hang barrels in the tree vests in the original user who is recognised as a developer of bee farming.³⁷ The same custom prevails in South-Western Uganda. In Amodu Tijani v. Secretary of Southern Nigeria³⁸ the claimants proved development of the land by showing that the inhabitants of the village on or adjacent to the land from whom he regularly received customary tribute for the use they made of the lands in question, collected palm nuts from the palm-swamp, caught mud fish and cut mangrove wood from the mangrove swamp. In addition, oil was extracted from the palm nuts and sold. Some of the mud fish was prepared and sold in the market, while the mangrove wood was converted into charcoal. As regards the grass, the goats from the village grazed on it.

. It may be wondered what this description of development under customary law has to do with modern urban planning and development. The point to be made is that as more and more land becomes required for the urban centres it will be acquired from areas where the mode of living and the attitude of the inhabitants are radically different from what modern policy-makers and planners expect. They may have to be knowledgeable about customary development if they have to sell and legitimise their own thinking about the subject. As towns expand and more rural

people migrate to them, the majority of the urban dwellers will be people who are used to the concepts of customary land tenure and its rules of development and the main question may be how those concepts and rules can be translated into the modern principles and notions of planning and development. This is why it is important to analyse land law, both customary and legislative.

Another characteristic of customary land tenure was the fragmentation of land holding. By fragmentation we mean the customary or legal division of land in such a way that over a given period of time that land is in such multiplicities as there are owners thereof; or alternatively the acquisition by an individual of ownership of parcels of land interposed or sandwiched between and appurtenant to land belonging to several or more owners and scattered over a given locality. Some writers define the former as sub-division and the latter as fragmentation.³⁹ In those systems of customary tenure where an individual is entitled to claim any piece of ground provided it is not already occupied by others, fragmentation is extensive. The claims must be of natural user such as building a house, cultivating crops or grazing cattle, except that with regard to the latter the claims were usually temporary. Moreover, the fact that one had decided to settle, say, in place A, did not prohibit one from making developments in place B provided that place was unoccupied. An individual might construct a house in place A but if the land was not suitable for the growing of simsim he was entitled to grow it in place B. If the land in B was not fertile for the growing of yams and land in A was, the residents in B were entitled to grow their yams in the latter place provided that the residents there had not exhausted all the land. There was no question of

earmarking the land for future use unless it was related to the rotation of crops. Thus, anyone within the clan or tribe was entitled to build, cultivate or graze his cattle anywhere within the clan's or tribal land. A resident could stop anyone from grazing his goats on growing simsim but had no right to do so in respect of unoccupied land. This was one of the reasons why registration and enclosures of land were later resented and unappreciated. In this type of society the question of where one's boundary began or ended was not so important. The knowledge required was whether or not a particular piece of land was free from any developments for the time being. Hence the question, "Is the cotton growing in the back yard of your house yours?" is not always answered in the affirmative. In this system, a fertile piece of land is likely to be claimed by several persons, each with a customary right to use it, thereby culminating in multiple plots. The land was not divided according to the needs of the community, but more often than not, according to the needs of the individual.⁴⁰

In all the tenures of a customary nature both economic factors and the rules of inheritance led to a further fragmentation of the land. By tradition, a son is entitled to a portion of his father's land. Usually this portion is not sufficient for his needs and as many relatives and neighbours as have land of their own will give him marriage gifts in the form of land. Since these relatives and neighbours are by no means near one another, the portions which eventually come under the ownership of the son will be scattered over a large area. Another custom which prevailed in some tribes was the institution of blood friendship, known in the western region of Uganda as Mukago.⁴¹ A party to

the Mukago was under a moral duty to give his blood friend part of his land, if he had any, especially if the latter was destitute. In some cases, the obligations to a blood friend were much higher than those owed to natural relatives and the duty to give land prevailed notwithstanding that the giver might not have enough land to distribute amongst his own relations. Similarly, on the death of a man it was expected that his source of wealth, in this case the land, would be distributed fairly among his dependents. Fragmentation would become greater in the event of the deceased being survived by several widows and a number of children. To complicate matters further the land would be distributed not merely according to size but also according to use and fertility. For example, a man dies, leaving five surviving sons and five acres of land. Supposing that the land is not situated in one place but five, each suitable for building purposes and growing maize, millet, potatoes and peas respectively. Each acre will be divided into five portions so as to give every son an equal chance to build and grow whatever crops flourish in the various places. Thus, following his death, the man's five acres will have increased to twenty-five separate portions of land. The sub-divisions likely to occur in the next generation can only be imagined. Writing on this aspect of land tenure in Kenya Homan states,

"Succession on death still follows the old law and custom rigidly as regards immovable property, all a man's heirs are entitled to a share in the land."⁴²

It is not surprising therefore that when the modern planner begins to ascertain the ownership of customary land and to consider who is to be compensated under compulsory acquisition he faces a formidable task. When the land is so fragmented it

becomes almost impossible to plan any extensive development project since it is impossible to know beforehand whether all the owners and occupiers, wherever and whoever they may be, are agreeable to the proposal. With so many landholdings interlocked it is not easy to conclude negotiations for planning and development purposes or to discover who should be heard or compensated. To some extent this state of affairs continues to exist side by side with legislative measures introduced with the advent of the colonial administration and since the Independence of the East African countries, which are examined in the second part of this chapter.

PART II: COLONIAL AND POST-INDEPENDENCE LAND LAWS AND POLICIES

Section (a): The Colonial Experience

Five kinds of landholding may be discovered as having existed during the colonial administration of East Africa. They were the Mailo land tenure created specially for the kingdom of Buganda, the lands reserved or to be reserved for the development of towns and municipalities, freehold land created mainly for the non-indigenous populations, Crown land and lastly, land reserved for the indigenous tribal communities.

In Uganda the colonial administration concluded the 1900 Agreement with the Buganda kingdom and inter alia, purported to preserve the customary land tenure which we mentioned earlier as pertaining to the areas with kingdoms. In form and practice, the provisions of the Agreement took a completely different line from both the original customary land law as understood in Buganda and the colonial practices which had hitherto applied to other territories of Central and East Africa.⁴³ Of the original tenures

only the official estates were recognised. However, these were converted into private estates of those chiefs who happened to be in power at the time of the Agreement. The clan heads were largely ignored and the rights of the peasants were degraded to tenancies at will from the landlords. The best arable land was selected and taken over by the Kabaka, his family and the greater chiefs. Certain lesser chiefs and some individuals who had acquired holdings under customary prescription had their titles recognised and incorporated in the Agreement. Each of these holdings was defined as a Mailo estate.

The Agreement did not define the type of tenure it had created. It simply called it Mailo land. The word Mailo is derived from the English mile or square mile and is now adopted in Buganda to indicate an estate of land owned otherwise than a tenancy. The nature of the holding and the incidents of user show that the Mailo land is owned on the same principles as English freehold even though there are certain restrictions on the power to sell such land particularly to non-Africans. The Mailo land is transmissible through succession and sale and over the years it has been sold or willed away in such a manner that there has been considerable fragmentation of the original grants. The 1900 Agreement was followed by intensive survey and demarcation of all the land in the kingdom, estimated at 19,600 square miles. The bulk of this land went to the Kabaka, his family and the chiefs. Private landowners who were relatively few were to receive the estates of which they were already possessed and which were estimated and computed at an average of 8 square miles per individual.⁴⁴

Her Majesty's Government reserved for itself all forests and mineral rights except that in the case of the latter the individual Mailo owner

was entitled to a percentage of the proceeds if the minerals were found in his land. The issuing of land titles to individual claimants commenced in 1909 and has continued in operation ever since. The grant of land titles is governed by the Registration of Titles Act which applies to the whole of Uganda notwithstanding that only few areas outside Buganda are affected by the provisions of the Act. In 1907 a Committee was set up to consider land tenure in Buganda and its report recommended that Mailo land tenure should be defined by native law. As a result, the Buganda Lukiiko or Parliament passed the Possession of Land Law, 1908, which, inter alia, protected African landowners against non-Africans by prohibiting transfer of land owned by the former to the latter without approval from the relevant Minister.

However, Mailo landowners were permitted to sell land to Ugandan Africans or give it to them in the form of a gift or legacy provided that the disposal is made in writing. Easements in Mailo land were preserved as follows:-

"(i)(h) Any person who becomes the owner of Mailo, let him not think that he alone is the owner of the old roads on it which the people have used of old, let him not think that he has become the owner of running waters which were drawn by people long ago, and of springs and ponds which people have drawn of old . . . The owner of a Mailo will not be permitted to prevent any other person from herding cattle, goats or sheep or other animals on waste or uncultivated land on his Mailo until it is fenced."⁴⁵

The Law also reserved the right of public authorities to construct works and lay roads for the benefit of the general public. In particular section 3 of the Law provided that,

"(1) Lukiiko may cause wells, tanks, reservoirs, pipes or other works for the supply of water for the benefit of the public to be constructed or installed and maintained on any Mailo.

Compensation shall be given for the disturbance of growing crops or buildings, and due regard shall be had to the interests of such owner so as not to cause unnecessary interference with his enjoyment of the land."

Subsections 2 and 3 of the same section imposed penalties on Mailo landowners who either damaged such installations or works or who denied access to any member of the public to the facilities created. Neither the Agreement nor the Possession of Land Law dealt with the rights of Bataka and the peasants. With the introduction of a cash economy and the growing of cotton and coffee, the landlords in Buganda began to exploit the peasants. The customary tribute known as Busulu was converted into money and in addition, the Mailo landowners began to demand other dues from their tenants. Of the new situation Richards wrote:

"The chiefs, now commonly referred to as landowners, retained much of their old power, their rights to allocate land, their authority over their 'men', now described as tenants, and their position in the political councils of Buganda. They could still demand services from their peasants, and when cotton was introduced at the beginning of the century and peasants asked for extra land on which to grow the new crop, they began to levy toll on the cotton grown under the title of envujjo. They seem also to have made other demands considered excessive."⁴⁶

Thomas and Spencer⁴⁷ also observed that the landlords used to demand one out of every three bags of seed cotton harvested. The peasants objected to this form of exploitation and with the clan heads as their champions they began to press for reform measures. The landlords, having become accustomed to the advantages of individual ownership, resisted the peasants' claims. The controversy raged on for some years until the Bataka agitation of the 1920's when the colonial government was compelled to intervene. After convincing the Mailo landowners that their rights under the 1900 Agreement would be preserved, the government

persuaded the Lukiiko to pass the Busulu and Envujjo Law under which the rights and obligations of the respective sides were recognised and guaranteed. The peasants acquired greater protection under the new law than they had hitherto enjoyed under customary law:-

"In law the security of the peasant is greater than it was before, since he is protected against arbitrary eviction; the chief can no longer plunder his possessions, and his obligations are defined by law which fixes the landlord's share of economic crops at a much smaller amount than that which some chiefs had previously demanded. At present some landlords go to the limits of their legal rights, but many of the older chiefs do not exact their full dues. Peasants who complain of oppression usually say that it would be no use moving because all landlords are alike; but others will tell one that they have left a landlord who 'treated them badly', and on inquiry the ill-treatment will prove to have been a pressing demand for rent."⁴⁸

The annual rent for Mailo land was permanently fixed at ten shillings per annum, and apart from the customary duty to give respect to the landlord and the requirement for a small sum to be paid in respect of acres or parts thereof put under cultivation of economic crops, the peasants enjoy the right of undisturbed occupancy. The landlord has the power to allot holdings on his Mailo as was decided in the case of Matovu v. Isa and Another.⁴⁹ Eviction of the tenant must be in accordance with the reasons and procedure laid down in the Busulu and Envujjo Law. In accordance with the decision in Kiwunuka v. Nakku⁵⁰, the landlord has a reversionary interest in the tenancy subject to the tenant being succeeded by his heir at customary law. He also has the right to establish his official residence on his Mailo land. In exercising his rights, the landlord must have regard to the preservation of the rights of his existing tenants. Consequently, as long as the tenant observes the obligations under the Busulu

and Envujjo Law, the landlord is powerless to remove him from his tenancy which is known in Buganda as Kibanja. The law was an important measure in that it established, on a permanent basis, a legal relationship between the Mailo landowners and the peasants.⁵¹ Unfortunately, the political success of the measure was not complemented by the possibility of economic development of the land. Apart from certain abuses of the system by a small number of the landlords who demanded high and illegal premiums as a pre-condition to granting tenancies, the law operated to the detriment of the landlords. The rent and other tributes remain static notwithstanding that the economic realities of the situation demand an equitable price for the land. Some of the more enlightened landlords succeeded in buying out their tenants but where the numbers of the latter were greater in one Mailo estate the compensation price acted as a deterrent. Nor could the tenants themselves develop the land since its use was limited to cultivation. In any event, the landlord was reluctant to authorise other uses because the system did not entitle him to have a share in the accruing profits from such other uses.

Thus, from both the point of view of the landlord and of the tenant, Mailo land is heavily encumbered. It also encourages the demand for illegal, secretive and indefinite premiums for the grant of tenancies at the usual tribute. For example Haydon⁵² cites examples of these illegal premiums where a grant of a plot on virgin bush or in a forest or swamp fetched anything up to 500 shillings and a plot of arable or cultivated land up to 2,000 shillings in illegal premiums. Despite these disadvantages, the system was responsible for what Mukwaya has described as the stability of the society in Buganda. It also enabled the Africans to command the

dominant position in the agricultural economy of the country, founded on peasant farming.

With regard to the rights of the Bataka, the first leading authority which clarified the position was Kasbante v. Kaira.^{52a} The question to be decided was whether Kaira, the head of the Buffalo Clan, had a right to mark out land as his Mailo under the 1900 Agreement from the Clan's Butaka. It was held that as guardian of the clan land, Kaira had this authority but only insofar as he would use it personally without the power to transmit or sell it or dispose of it without the consent of the Kabaka. In a later case, Fazaldin Miranbux v. Simoni Lule⁵³, Guthrie Smith made a reference to the Buganda Native Chief Justice and the Lukiiko Court as to the meaning of 'butaka' and received a certificate of clarification. Among its directives were the following: that butaka was land held by right of birth, that the Kabaka was the supreme ruler of all Bataka and that the Mutaka or clan head had the right to look after the clan land, to receive rents from persons on the land, to sell trees which are there, and the fruits and things found therein. In addition, he had the power to settle all disputes arising out of the land and members of the clan had the right to select their own clan head.

The learned judge accordingly held that the custom was certain and reasonable and Butaka could not be sold out of the clan or be taken in attachment. However, this decision was criticised by Gray, Ag. J. in 1933 when he said,

"I will assume for present purposes that the land in question is butaka, by which I mean that it is the ancestral burial ground of members of the defendant's clan, and for that reason was by the ancient custom of the Buganda not alienable to persons who were not members of that clan. Fazaldin Miranbux v. Simoni Lule (3 U.L.R. 101) is an apparent authority

for saying that such land is still inalienable outside the clan, but I am strongly of the opinion that that decision calls for reconsideration. One has only to look at the land legislation passed by the Baganda themselves to see that more than considerable doubt is thrown on the correctness of the decision. If the provisions of any law are repugnant to the continued existence of any custom, that custom must be treated as abrogated and destroyed, even if the law does not expressly abrogate it in so many words. Examination of the land legislation passed by the Native Government for the Baganda of Buganda clearly shows to my mind that customary butaka no longer exists."54

Gray's decision was in Timoni Mwenge v. Serwano Migade⁵⁵ and its effect was to equate Butaka with Mailo land as far as the clan head was concerned. Subsequent decisions on butaka have tended to follow Mwenge v. Migade rather than Miranbux v. Lule and the result has been that while clan land continues to be important for clan burials and ceremonies, for all intents and purposes it is the Mailo land of the clan head.^{55a}

The system of Mailo land was extended to the other kingdom districts of Uganda particularly with regard to the king's holdings and the land belonging to royal families, the chiefs and notable private individuals. The rights and obligations of the landlords and tenants were governed by local laws of those kingdoms which were modelled on the Buganda pattern of laws. It is to be appreciated that with the considerable extensions of urban centres in these regions which have occurred since Independence a large part of the urban planning and development will have to be reconciled with these laws - hence, the importance of discussing them at this stage.

The second type of land in East Africa was said to consist of areas reserved for town and municipality development. Pre-colonial East Africa did not possess any urban centres of importance. Those that existed were to be found on the coastal belt established by Arab traders or inland as market places.⁵⁶ Apart from these, the indigenous population lived in

clustered villages of homesteads and cultivated the land according to traditional customs without the sophistication or necessity to found urban agglomerations. On the other hand, when the colonial administrators arrived they realised that their mode of living and the economic development that would follow required and would inevitably lead to the founding of towns and urban authorities. Consequently, wherever they established a government administration plans were effected to prepare for the development of an urban environment. The plans called for the reservation of the land surrounding or adjacent to administrative posts.

In all the three territories the Governor was empowered to declare any area a town or municipality, to assign a name to the area declared and to define and alter its boundaries. Further, according to the provisions of the Crown Lands Ordinances in force in the three territories once the Governor declared the town or municipality, all the land within its boundary became Crown land which the crown would automatically lease to the relevant town or municipality council known as the controlling authority.⁵⁷ The Council would then be empowered to develop the land for its own purposes or to sub-lease it to individual developers or residents. The Crown Lands Ordinance contained a provision to the effect that

"Notwithstanding any law or custom to the contrary, it shall be unlawful for any person to occupy any crown land within the boundaries of any township or trading centre unless such occupation is in pursuance of a valid licence or lease which in the case of a licence has been issued by the Governor and which in the case of a lease has been granted by the Governor or by a person who is in occupation himself pursuant to a lawful lease or sub-lease."⁵⁸

As recently as 1969 this provision was invoked in the case of the City of Kampala v. Paulo Ochido and Another.⁵⁹ The City of Kampala sued the

defendants on the ground that they were in unlawful possession of Plot 16 of central Nakawa, a suburb of Kampala city. It was argued on behalf of the second defendant that he had been leased a tenancy of Mailo land and had continued to pay rent in accordance with the Busulu and Envujjo Law since 1954. However, the court found that at the time the land was 'leased' Nakawa was within the jurisdiction of an urban authority and since the defendant was unable to show that he had obtained licence or lease as the basis of his occupation, his possession of the plot was unlawful, and the land reverted to the Council without compensation subject to counsel's arguments with regard to mesne profits or any other order against the defendants.

It follows that all the land in townships throughout East Africa with the exception of towns in Buganda, was the property of the Government which was developed and controlled by urban authorities. However, the land acquired or earmarked for urban centres was not sufficient for the future expansion of the towns necessitated by the increase in population. The colonial administration regarded urban centres as being for non-African residents, notwithstanding that in every town, municipality or trading centre they were overwhelmingly outnumbered by the indigenous population. The area surrounding the town or trading centre continued to be occupied by the Africans in accordance with the customary tenure system, or in the case of Buganda, under the Mailo land system. For as Thomas and Scott observed in 1935 in reference to Uganda,

"There is no evidence, however, of a tendency on the part of the natives to congregate in the townships . . . The native is fundamentally a peasant, whatever his rank or stage of education may be, and neither understands nor has any sympathy with a manner of life which is not intimately connected

with land."⁶⁰

This statement reflects the official policy in limiting the land acquired for urban development during the colonial period but as we shall see the policy was short-sighted and would create more problems for future planners.

The third type of landholding was that designated as freehold. The Crown Lands Acts also authorised the Governor to make grants of land in freehold. Under English law, freehold is that type of estate which fulfils the conditions of a fee simple absolute in possession. This has been described in English law as the most ample estate ever known to man. The owner of such an estate has in theory complete freedom to transfer it either inter vivos or by will and may use or abuse it in any manner he chooses. Although the old English feudal notion that the overlord of all land is the King still survives it can be said that for practical purposes the holding of a fee simple amounts to absolute ownership. In practice, however, the rights of a fee simple owner are subject to certain rights and interests of both individuals and the public generally. In Tanzania a form of limited freehold was created under the German occupation, preserved by the British mandate administration and abolished by the Freehold Title (Conversion to Government Leases) Act of 1963.⁶¹ Since therefore no modern planner is ever likely to face the question of freehold proprietors there is no need to discuss them in detail in respect of Tanzania. In both Kenya and Uganda there is some freehold land, albeit now subjected to a number of restrictions introduced since independence so as to make it radically different from that prevailing under English law. Writing on land law in Kenya, Nkambo-Mugerwa states,

"Until recently, the Statute Book of Kenya had about the most extensive enactments concerning land rights in East Africa, extending from the Orders-in-Council promulgated on the imposition of British administration over the area to the latest enactments designed to foster a sense of individual proprietary rights by means of adjudication and registration of interests in land."⁶²

Although the grant of freeholds in Kenya was extensive especially in areas known as the "White Highlands", in Uganda it was limited to few plots in the Kampala area and to the farming lands outside the main urban centres.⁶³ In both cases the grants of freehold land were subject to rigid regulations of development. Failure to develop the freehold made it liable to forfeiture to the Crown. Nkambo-Mugerwa doubts whether this forfeiture was ever exercised against the European settlers of Kenya and sees it rather as a bar against the entry of non-Europeans to the Highlands who in any case might not have had funds to develop the freeholds. However, there is evidence to show that in Uganda the forfeiture provision was sometimes invoked against freehold owners who had failed to develop their land in accordance with the terms of the grant.^{63a}

There were other types of freehold land not designed specifically for non-Africans. For example, in Uganda land which had been granted or donated to church missionaries and other religious organisations was converted into unconditional freeholds.⁶⁴ It is interesting to note that all major religious denominations in Uganda possess church, mosque or missionary land in almost all the towns. The governing bodies of these religious denominations have either developed these lands themselves or leased them to independent developers some of which are government corporations. There was also land known as Native freehold. The provisions of the Crown Lands Ordinance

and other land regulations stipulated that any other land which was neither crown land nor tribal communal property could be registered by the natives if they proved that they had habitually lived there and occupied it in accordance with local custom.⁶⁵ Few inhabitants bothered to be so registered and apart from a few titles the land became the property of the crown. Again, in view of what has been said, Native freeholds tended to be outside urban centres. Apart from outright grants, the Governor was permitted to sell plots in crown land to private individuals on condition that the land sold was occupied within a specified period and developed according to stipulated conditions. It has been observed by one writer that the obligation to register all grants or sales in fee simple and leasehold succeeded in bringing onto the Land Registers all privately owned lands not held according to African law or custom.^{65a}

Elsewhere the land was formally declared crown land.⁶⁶ This was particularly the case in areas where the colonial administration had found no central tribal authority with which to conclude agreements or where it was in the interests of the administration, as in the case of Kenya, that no special native tenures should be recognised or created. It was perhaps unfortunate that this should have taken place in the non-kingdom, non-chieftainship districts where some kind of individual ownership had existed under customary law which could have led to an easy and formalised individual proprietorship of the land. It is to be noted that the land was declared to be crown land notwithstanding that it was inhabited by the indigenous population who, moreover, had occupied and cultivated it from time immemorial. They therefore continued to do so according to custom without

understanding or caring about the new status given to their land. In both Uganda and Tanganyika the colonial administrations took cognisance of this fact by declaring that

"Any crown land occupied and cultivated by natives will be as secure from alienation as if protected by title deeds."⁶⁷

The security of occupancy was subject only to the requirement that the natives prove the custom in default of which they had either to register their claims under the Registration of Titles Ordinance or obtain a licence or lease in accordance with the provisions of the Crown Lands Ordinance. In Kenya, however, Africans occupying crown land were regarded simply as tenants at will. This view is reinforced by the judgment in Gathomo v. Murito in which it was declared,

"The effect of the Crown Lands Ordinance, 1915 and the Kenya (Annexation) Order-in-Council, 1920 and of the Kenya Order-in-Council, 1921 was 'Inter alia' to vest land reserved for use of a native tribe in the Crown and consequently all native rights in such reserve land whatever they were under native customary law disappeared, and natives in occupation of such crown land became tenants at will of the Crown."⁶⁸

It was not until the enactment of the Native Tribunals Ordinance in 1930 that African rights to land in a crown reserve came to be recognised. The effect of this Ordinance was declared in Stanley Kahahu and Others v. Andrea Waiganjo and the Attorney-General⁶⁹ as allowing Africans to occupy the land according to native law and custom except that the alienation of such land would still be governed by statute - in this case - the Native Lands Trust Ordinance.⁷⁰ In 1939, another statute directed the various county councils in whom the natives' trust land was vested to hold it for the persons who ordinarily resided on the land and to give effect to their rights, interests and benefits

arising under customary law.

In all the three territories land held under customary law or in native reserves could still be acquired for a public purpose or for economic development. For instance, the Kenya Trust Land Ordinance of 1939 authorised the county councils to alienate trust land for periods not exceeding 30 years. The policy paper on land in Tanganyika issued in 1953 stated,

"The essence of the . . . policy is that, while African interests in the land are to be carefully safeguarded and while adequate allowance is to be made for the natural increase in population over the years so that overcrowding does not result through lack of adequate land, the economic development of the territory must be furthered by the allocation of available land for non-African agriculture and enterprise generally."⁷¹

Similarly, section 33 of the Uganda Crown Lands Ordinance provided that,

"The Governor may sell or lease areas of land upon which there are Africans, but Africans actually in the occupation of land comprised within the areas sold or leased at the date of such sale or lease shall be permitted as of right to continue in occupation of and to cultivate such land until such arrangements as shall be approved in writing by the Governor or other officer deputed by him shall have been made and carried out for the removal of such Africans to other areas equally suitable for their occupation, or for the payment to them of compensation."⁷²

In the 1950's experts began to urge the East African colonial administrations that economic development demanded that customary land tenure should be abandoned in preference for individual holdings on the English pattern of fee simple. In Kenya, the Carter Land Commission⁷³ had advocated reforms towards individual land owners in 1933 but the subsequent Native Lands Trust Ordinance made no provision for individual titles to land. In 1954 Swynnerton produced a paper in which he highlighted the urgent need, from the agricultural development point of view,

to take active steps to furnish each African farmer with an indefeasible title to his land. He argued that,

"Every African farmer must be provided with such security of tenure, through an indefeasible title, as will encourage him to invest his labour and profits into the development of his farm, and as will enable him to offer it as security against such financial credits as he may wish to secure from such sources as may be open to him."74

He also recommended a process of consolidation of fragmented land units and the creation of a special court to determine disputes arising out of the process. The Kenya Government accepted the principle of the Swynnerton Plan and began to issue African farmers with individual titles to their holdings.

Meanwhile the Report of the East African Royal Commission was published in 1955. The Commission had observed that

"the policy of leaving African Land Tenure to continue for the most part under customary influences has not always led to the individual security demanded by modern economic conditions."

and therefore they had recommended that

"policy concerning the tenure and disposition of land should aim at the individualisation of land ownership, and at a degree of mobility in the transfer and disposition of land which, without ignoring existing property rights, will enable access for its economic use."75

The publication of the Report was followed by the 1956 Arusha Conference on African Land Tenure in East and Central Africa which reported, inter alia,

"It will be clear from what we have said in the preceding section that we consider that Governments would be well advised to encourage the emergence of individual tenure in areas where conditions are ripe for it."76

Having welcomed the Swynnerton Plan it was hardly surprising that the Kenya administration should be pleased to implement the subsequent recommendations and implementation was put into effect by two statutory

measures, namely the Native Land Tenure Rules and the African Courts (Suspension of Land Suits) Ordinance, both of 1956. The Ordinance was later altered and first renamed Native Land Registration Ordinance and then Land Registration (Special Areas) Ordinance and both the rules and the Ordinance as amended continued in operation until independence.⁷⁷

In both Tanganyika and Uganda the advocacy for land consolidation through registration of individual titles was largely a failure. In Tanganyika, African leaders rejected private ownership of free-hold as being alien to African law and custom. But more importantly the rejection was based on the political and social conditions prevailing in the country at the time.⁷⁸ Transfers in freehold were always at the expense of African occupiers who in the process were deprived of lands necessary for their existence and therefore "in order to survive became workers for the settlers."⁷⁹ The system was therefore associated with colonial exploitation and domination.

In spite of the fact that the proposals were related to individual ownership of land by the Africans themselves leaders like Nyerere were not prepared to accept exploitation of any form whether it was by Africans or non-Africans. When the Tanganyika colonial administration published its proposals for extending the freehold system to Africans, Julius Nyerere wrote a pamphlet in which he gave a brief but lucid *exposition of the African conception of land holding*. He then went on to oppose any plan designed to introduce individual ownership in the following terms:

"Once you give land to a person to use as he would use his own house, then you cannot prevent him from using it as he likes . . . If people are given land to use as their property, then they have the right to sell it. It will not be difficult to predict who, in fifty years time, will be landlords and

who the tenants. In a country such as this, where generally speaking, the Africans are poor and the foreigners rich, it is quite possible that, within eighty or a hundred years, if the poor African were allowed to sell his land, all the land in Tanganyika would belong to the wealthy immigrants. But even if there were no rich foreigners in this country, there would emerge rich and clever Tanganyikans. If we allow land to be sold like a robe, within a short period there would only be a few Africans possessing land in Tanganyika and all others would be tenants."⁸⁰

With the condemnation of the system by the African leadership , the colonial administration found difficulty in implementing it. By the time freeholds came to be abolished by the same leadership after independence the majority of freeholds were still those created under the German occupation of the country. It would seem however, that Tanzanians generally did not have the same dislike of freeholds as shown by their leaders. Writing in 1965 about "The Concept of Customary Sale of Land Today" Munoru observed that for economic reasons there was a great desire among certain tribes of Tanzania to have individual ownership of land.⁸¹

If rejection in Tanganyika was through the campaign of local leaders, in Uganda it was partly because of the attitude of the people and partly because of lack of administrative machinery and political drive. The African leaders in Uganda had welcomed the East African Royal Commission Report mainly because of the influence of Mailo tenure which had been in existence since the turn of the century. The policy in Uganda was to introduce the system of individual landholding in the more populated areas of the country.⁸² The scheme was handled by an African member of the colonial administration who was supported by other African members of the Legislative Council. Thus, from the beginning the scheme was founded on representative legitimacy. Nonetheless it did not succeed as the administration had hoped. There was not

sufficient time allowed to educate the people affected as to the advantages of the scheme. Consequently many people were hostile to it because they thought, quite rightly from their point of view, that it was a manoeuvre by the government to get more taxes. The government was charging a survey and registration fee at the time and it was indicated that land titles would in future form the basis of land taxation.⁸³ The situation was mishandled by the managers of the project scheme in that instead of doing the job themselves they delegated the power to semi-illiterate chiefs to go to the villages and urge people to have their land surveyed and registered. The chiefs who did not know any more than the villagers about the scheme exaggerated the importance the government attached to registration and to the fees payable rather than concentrating on informing the people about the advantages of registration and individual ownership. Because of this fear, even those who were willing to register first divided and subdivided their land among their children and relatives so as to minimise the taxes payable on each parcel of land thus defeating one of the main objects of the scheme.

In his "Pilot Scheme for Land Titles in Uganda", Lawrance mentions some of the difficulties encountered by those who administered and implemented it. For example he mentions cases where an applicant by the name of A would mysteriously disappear on the adjudication certificate where he tells the surveyor that, in fact, his name is B, thereby presumably making it more difficult, for the government, in his opinion, to collect tax from either of his pseudo-names. He also reports cases where father and son or two brothers applied for the same piece of land and were both adjudicated separately as the owner. It may be that again their aim was to share the

burdens of tax between them. Lastly, he mentions one parish where 461 owners were registered in respect of 733 parcels of land, to indicate the extent to which land had become fragmented in that part of the country.⁸⁴ A former Commissioner for Lands and Surveys in Uganda has also said,

"Unfortunately the educational standard and administrative ability of the adjudication committee members was greatly over-estimated. . . . There was considerable difficulty in correlating the various applications, adjudication certificates and surveyed plots."⁸⁵

In the end only a small area of the whole project came to be completed and although in 1961 the members of an international commission on "The Economic Development of Uganda"⁸⁶ recommended the continuation of the scheme nothing much had been done before the country experienced new land policies and constitutional changes.

In concluding this section we may discuss the provisions in all the three East African territories which prohibited land deals between Africans and non-Africans.⁸⁷ Initially, the policy is said to have been designed for the protection of the African against non-Africans who were wealthier and more sophisticated in economic and business affairs. This was certainly true of both Tanganyika and Uganda but in Kenya the law was a two-edged sword in that it also protected the Europeans in the 'White Highlands' for through policy and conditions of tenure Africans could not purchase or obtain leases in the land.⁸⁸ All the three countries had a provision similar to that in the Tanganyika Land (Law of Property and Conveyancing) Ordinance to the effect that,

"A disposition of land belonging to a native in favour of a non-native or conferring on a non-native any

rights, over the land of a native shall not be operative unless it is in writing and unless and until it is approved by the Minister."89

However, as we have already noted such land was subject to the government's power to compulsorily acquire it and grant or sell it to

"persons, corporations, co-operative bodies and others, irrespective of their national status, who are prepared to develop the land to standards prescribed by the regulations."90

A number of cases have come to the East African courts whose main consideration is the question of a transaction without the necessary consent, grant or sale.⁹¹ In Fazal Kassam (Mills) Ltd. v. Abdul Nagji Kassam,⁹² the court held that in the absence of writing and consent the original agreement between the parties was void and the court had no power to order specific performance. However, there are other authorities, notably Patel v. Lawrenson⁹³ and Mohamedbhai v. Mtoo Tafakari⁹⁴ which would seem to suggest that the agreement is neither unlawful nor illegal. In the latter case it was discovered during the hearing of the appeal that the disposition on which the plaintiffs relied had not obtained the necessary approval. In rejecting the disposition Alexander J., observed that it was open to the plaintiffs at any time after it came to their knowledge to obtain the necessary approval before approaching the court for the relief they sought. By implication the learned judge was suggesting that the agreement had persisted but was unenforceable unless the approval had been obtained. The case went to the Court of Appeal which upheld the judgment without commenting on these words used by the judge of first instance.

In Kulubya v. Amer Singh⁹⁵, an African registered Mailo owner leased land to the appellant, a non-African, without the necessary consents. After 13 years he gave the latter notice to

quit the premises, and upon his failure to do so brought proceedings for eviction and for rent, mesne profits and damages for the continued possession after the notice to quit. The court of first instance dismissed the plaintiff's claim on the ground that as both he and the defendant were 'in pari delicto' he would not rely on the illegal agreement. On appeal this was substantially reversed on the holding that the plaintiff having dropped his claim for rent could rest his title to possession not on the void lease but on his title as registered owner of the Mailo land. Another ground suggested by their Lordships was public policy. They declared,

"Though the plaintiff had offended by being a party to the illegal and ineffective agreement their lordships do not consider that considerations of public policy demanded the failure of his claim to possession: on the contrary such considerations pointed to the necessity of upholding it in order to eject a non-African who was in unlawful occupation. Their Lordships agree with Forbes, V.P., 'that it would be contrary to public policy for the courts to refuse to assist an African to eject a non-African in illegal occupation of the former's land, even though the African may have committed an illegal act in permitting the non-African to enter on the land!'"

It is also interesting to note - and the court made a similar observation - that a rejection of the plaintiff's claim would have meant that the defendant would be entitled to remain in permanent possession of the land without having to pay any rent or compensation to the plaintiff and thereby defeating the object of the legislation.⁹⁶

The provisions prohibiting land sales and leases between Africans and non-Africans was slightly different in Buganda from other areas in East Africa. Not only was it governed by the general law of the land but was also subject to Buganda local laws and regulations. The Buganda Possession of Land Law provided, inter alia, that

"The owner of a Mailo will not be permitted to hand over his Mailo to one who is not of Uganda or to a church or to a religious or other society, except with the approval in writing of the (Governor) and the Lukiiko. The owner of a Mailo shall not permit one who is not of Uganda to lease, occupy or use his Mailo except with the approval in writing of the (Governor) and the Lukiiko provided that the owner of any Mailo other than a Mailo situated within the Ggombolola of Omukulu we Kibuga may, without such approval as aforesaid, but with the approval of the Ssaza Chief of the Ssaza in which such Mailo is situated, permit one who is not of Uganda to occupy or use such Mailo or any part thereof for a period of not more than one year or from year to year but so that the area so occupied or used shall not exceed two acres in the case of any one tenant."⁹⁷

The policy behind the proviso seems to have been the necessity of enabling non-Africans to acquire short leases in African lands surrounding urban and trading centres for residential and commercial purposes. However, the land was limited to two acres so as to discourage non-Africans from using the land for extensive agricultural purposes.

The Buganda Government was also concerned about illegal transactions in land so in 1921 the Lukiiko passed the Land Succession Law which prohibited anyone from dealing with testate or intestate Mailo land without a certificate of succession issued by the Lukiiko.⁹⁸ This was followed in 1939 by the Land (Sale and Purchase) Law which made it an offence for anyone to sell or buy land in Buganda unless he was the registered proprietor or purchaser or donee of unsurveyed part of Mailo land and a memorial of his interest in such land had been entered into the Mailo Land Register.⁹⁹

In the Kenya case of Chemelil Ltd. v. Makangi Ltd.¹⁰⁰ it was held that the invalidity of the agreement for lack of the necessary consent would not bar any refund of the money exchanged under the Agreement. In that case the respondent company was in possession of land under a purported lease held of the appellant

company. The respondent company had already made a number of payments under the agreement. The lease having become void for lack of consent, the respondent company sued for the recovery of moneys paid thereunder. By a majority decision, the Court of Appeal held that as there had been a 'dealing' in the land in the course of which moneys had been paid, the respondents were entitled to recover the money. However, Chemelil's case is distinguishable from Kulubya's case in that the Kenya Land Control Regulations allowed such repayment by providing in regulation 9 that,

"Any money or other valuable consideration . . . paid in the course of any dealing, or under any agreement which . . . becomes void under this regulation shall be recoverable as a civil debt by the person who paid it from the person to whom it was paid."¹⁰¹

The restriction imposed on deals between Africans and non-Africans in respect of African land has been justified on a number of grounds. Sawyer¹⁰² enumerates the following: the absence in the social and economic pattern of most of native life of a conception of land as an alienable commodity; the absence of a conception of land as having commercial value. In this respect Sawyer cites the incidents when Africans parted with their land for nothing more valuable than trinkets and beads. We may also cite the case of the agreement Stanley made with the prince of the Ankole kingdom in which Stanley was given the sovereign right of government and administration over all the lands and territories within the jurisdiction of the king of Ankole.¹⁰³ Butagira has justified the restrictions in the following passage of his "The Mailo Tenure of Buganda":-

"Although there is a good case for permitting a high degree of mobility in the transfer and disposition of land, the danger that some of the lands may fall in the hands of unscrupulous moneylenders

should not be lost sight of. Very often it is the non-African who has the necessary funds to advance on mortgage of land. It is possible that some landowners may find themselves in a state of chronic indebtedness leading, say to a foreclosure of the mortgages, and thus being deprived of their lands. There is therefore, still a good case for retaining the present restrictions, trusting that the Minister concerned will exercise his discretion wisely."104

Whatever its merits there can be little doubt that the restrictions kept the Africans and the non-Africans apart, the former in their traditional villages under customary law and the latter in urban centres under the newly introduced law of urban planning and development. As we shall explain shortly this was one of the reasons which caused the Africans to contribute so little to the planning and development of their urban centres. Moreover, Butagira's trust that the Minister concerned would exercise his discretion wisely was not always borne out by the decisions. In a number of cases the discretion was exercised for reasons other than the interests of the parties concerned and of the public at large. It has been necessary to discuss the land legislation of the colonial era because the consequences of the colonial policies discussed in the next section can be said to be founded on that legislation.

Section (b): The Consequences of Colonial Land Policies and Laws

The acceptance of communal tenure and official as well as tribal ownership of land had an adverse economic result. The indigenous population was taught new methods of agriculture and husbandry; and Ordinances and Regulations were made to improve and control the cultivation of economic crops. Nevertheless, the land policy was prohibitive in the achievement of the projected objectives. There was no incentive for the local farmer to develop the land which he did not own individually and yet the

new cash economy emphasized and glorified individual ownership of land. The inability to appreciate that the Africans, especially those who were close to urban centres, had begun to prefer the cash economy to an agrarian subsistence agriculture was pointed out by African leaders. Thus, in his maiden speech to the Legislative Council, Sir Apolo Kagwa said,

"Sir, I should like to draw attention to the fact that the introduction of a cash economy has disturbed the African Society and shaken (it) to its very foundation - our customs. Unless the African is trained in the new economy and the art of earning money and spending it wisely he will be ruined and his progress will be impossible."105

But neither the colonial administration nor anyone else seemed to have taken heed of Kagwa's warning at the time. The Africans who tried to be absorbed in the new system found themselves hampered by the rules of customary tenure. Farmers could not obtain more land for economic expansion; nor could they introduce schemes of planned and intensive agriculture. There was no way in which unproductive or destructive use of land in the communal areas could be checked. It was almost impossible to move people from an overcrowded tribal area to another where there was plenty of land since the Native and Reserve Laws confined members of tribal groups to their specific areas. The Africans who wished to move into business in the urban centres found themselves prohibited by high standards and regulations of urban planning and development.

Moreover, the prohibition of land sales to non-Africans might have kept the African in his natural habitat but it also meant that his land could not be easily obtained by people who had the means to develop it. More importantly, he could not use it as security to enable him to get loans with which to develop it himself or to enjoy the urban life of his

country as someone other than a servant.¹⁰⁶

The radical changes which were taking place and affecting the demographic and economic conditions of East Africa lacked comparative and realistic reforms of the land as far as the Africans were concerned. This was a period when the cash crops, education and economic development generally had changed the attitude of the Africans towards customary land tenure. The trend in thought was towards recognition of individual ownership even in those areas where the land had always been communally owned. Yet, the colonial policy persisted in maintaining that land belonged either to the traditional ruler or chief or to the tribe and no individual could claim land ownership unless it was supported by his tribal custom. At the same time the colonial administration demanded the employment of members of all tribes on specific projects not necessarily sited in their respective tribal areas.

The recognised principle seemed to be that pronounced in the Amodu Tijani case by Lord Haldane in which he declared,

"In every case, the chief or Headman of the community or village or Head of a family has charge of land and in loose mode of speech is sometimes called the owner."¹⁰⁷

Nor did the number of cases being brought to courts in which Africans were pressing for recognition as individual owners of land have any great impact on the colonial administrations. In Jibana Tribe v. A.A. Visram,¹⁰⁸ an enterprising member of the Jibana tribe purported to sell land to the defendant. As soon as the defendant began to exercise the right of ownership the members of the Jibana tribe drove him and his servants out of the land and destroyed all the buildings he had put up. The defendant asked for and got government protection. The Jibana tribe sued the

defendant, contending that according to tribal belief, land belonged to God to be enjoyed by everyone, and could not be sold, either by an individual or by the elders of the tribe. Hamilton, C.J. agreed and found for the tribe but conceded that such a state of affairs was highly undesirable and recommended that the government should use its powers to change the customs. The government did not act upon this recommendation. Further, there is evidence to suggest that customary tenure was only recognised if its effect coincided with the land policies of the administration. In cases where the customs conflicted with those policies both the administrations and the colonial courts tended to ignore them. A case in point is Mroto Bin Mwamba v. Attorney-General.¹⁰⁹ The appellant applied to be registered as owner of certain parcels of land in Tanganyika but such registration would have conflicted with Government land policies. Be that as it may, the registrar called 'assessors' from the locality where the appellant lived and having heard their evidence the registrar was satisfied and accepted the application upon which the Attorney-General appealed. The appeal was allowed. On a further appeal the original appeal decision was confirmed.

However, an analysis of the facts of the case shows that much of the customary evidence was ignored in order to promote the policies of the colonial administration. Instead of accepting local evidence as to the meaning of land ownership and the rights of the appellant the higher courts preferred expatriate opinions of that meaning and rights. For instance, instead of accepting the findings of the registrar who had had the opportunity to listen to witnesses the final court of appeal in this case preferred the judge's opinion which was that the custom was a myth and that it was "the trees growing on the land and not the land itself which

was, and still is today, of interest to the Africans." The appellate court was also of the view that the appellant could not succeed since he had no document of title at all and his claim that he was an adverse possessor failed. Yet his argument was that he had been in possession before the enactment of the Land Registry Ordinance whose provision that,

"A person who claims to be in adverse possession of public land and applies for registration as the first registered proprietor thereof shall be entitled to be so registered . . . provided that . . . registration shall not be made unless the Registrar is satisfied . . . that the land is not held for the benefit of any tribe or community,"¹¹⁰

does not call for the adverse possession to be evidenced in writing.

However, the appellate Court explained this by the curious reasoning that adverse possession had been interrupted and resumption of it should be based on evidence. Apparently, during both the First and Second World Wars, military forces had occupied the appellant's land. There was written evidence that he had been compensated for the periods during which both German and British forces respectively occupied his land. The judge dismissed this contention on the ground that the compensation was in respect of loss of crops and in respect of houses demolished on the land. In a series of similar cases like Muhena bin Said v. The Registrar of Titles and Another,¹¹¹ Kuma v. Kuma,¹¹² Africans in possession of land sought declarations that they were entitled to be regarded as individual owners or to be registered as proprietors. In each case, the court refused to do so on the ground that these plaintiffs had failed to prove that their particular tribal customs allowed individual ownership. Commenting on the colonial policy towards African land, Sir Phillip Mitchell, a former Governor of Kenya, said,

"It is a sobering reflection that the whole of the land administration in respect of African occupied land . . . is carried on without any participation by the Central Government except in the stage at which the Provincial or District Commissioner may be involved in their capacity as revisionary or appellate authorities from the native courts. We have, in effect, adopted a wholly 'indirect' method in the matter and left the traditional agencies without guidance, in conditions in which it is unwise and unrealistic to pretend that they will be adequate for the task."113

Bentsi-Enchill quotes Sir John Gray, C.J., as having observed that an original native custom may be recognised by a native community in a modified form without losing its essential character of custom, but the courts cannot transform an original custom into a modified one.¹¹⁴ This statement would seem to be fair except that in the cases discussed above and especially those applicable to East Africa, the courts appear to have been saying that they were not prepared to allow the Africans to modify their native customs irrespective of whether or not the colonial situation had made modification absolutely necessary.

The judges, having been brought up under the principles of English law which recognised custom only if, inter alia, it was ancient and certain,¹¹⁵ and backing an administration which saw its survival in keeping the native in his natural habitat, were not prepared to exhibit the same liberalism as Okenu, J. and Lord Denning showed in Kotei v. Asere Stool when they agreed that:

"Native law and custom in Ghana has progressed so far as to transform usufructuary right . . . into an estate or interest in land which the subject can use or deal with as his own, so long as he does customary services to the stool,"116

There is reason to believe that the rigidity in maintaining customary land tenure was also designed to keep Africans out of urban centres and therefore maintain unofficial segregation of the races. For example,

the principle which governed the use of the urban pass laws in Kenya was articulated by Douglas Brummage in 1933 when in his recommendation he stated,

"It seems only right that it should be understood that the town is a non-native area in which there is no place for the redundant native, who neither works nor serves his or her people, but forms the class from which professional agitators, the slum landlords, the liquor sellers, and other undesirable classes spring. The exclusion of these redundant natives is in the interest of natives and non-natives alike."¹¹⁷

Only those Africans who were gainfully occupied were allowed to remain in the towns. Anyone else could be expelled. The locations for Africans in urban centres were intended to house only those people who had regular employment either in government or municipalities or as servants of non-Africans who resided and worked in the urban centres.¹¹⁸

The notion that the African should be restrained from leaving his tribal area was not based on the generous spirit that it is where he would be made to advance more quickly. On the contrary, few policy-makers were interested in the economic or social advancement of the Africans. Even among those who seemed to have a passion for pleading a better deal for the native none looked beyond the immediate needs of his stomach. Thus, Mr. Ainsworth pleaded,

"In my opinion it is more than desirable to reserve land for natives of this country; it is a moral duty, and if we neglect it we would, in my opinion, be guilty of the most flagrant breach of trust. I am convinced that the safeguarding of native rights and interests in this connection is practically our first duty when dealing with the land question."¹¹⁹

Having made this moral appeal, Mr. Ainsworth went on to say that it was of course notorious that most agricultural and pastoral natives were most extravagant in the idea of their requirements, and that what was required was to see that the native had what

was necessary for his existence, and what was necessary for any reasonable increase in numbers of the tribe. The Land Committee of 1905 in Kenya considered that the area of the native reserves should be determined with reference to the supply of labour and that any excess of population should find an outlet by working on European farms.¹²⁰ The Governor's despatch no. 193 on Land and Population in East Africa pleaded with the Colonial Secretary that

"the land must, on no account, be simply thrown open for congestion and destruction by ignorant peasants following their ancestral agricultural practices and tenure."¹²¹

Sir Charles Eliot, the Commissioner for the East African Protectorate had earlier written that

"Natives must be protected from unjust aggression and be secured sufficient land for their wants, but with this proviso, I think, we should recognise that European interests are paramount."¹²²

While speaking in the Legislative Council in 1941, Lord Francis Scott demanded the introduction of compulsory education for European children and reasoned,

"Education for all European children is necessary in Kenya because Kenya is a country of mixed races where European children are eventually going to be in a position of authority over other races."¹²³

Lord Delamere, the leader of the white settlers in Kenya wondered,

"if the policy was to be continued that every native was to be a landowner of a sufficient area on which to establish himself, then the question of obtaining a satisfactory labour supply would never be settled."¹²⁴

He therefore suggested that the native land reserves should be curtailed. In this he was supported by the Commissioner for Labour who observed that,

"The reasons for shortage of labour we considered from the evidence to be the following: the wealth of certain tribes arising from the large quantity of land at their disposal, the natural fertility of

their reserves, the possession of large quantities of stock and the profits of trade."125

It seems obvious therefore that the idea of African land and native reserves was not for the protection of the Africans but was thought out to protect the interests of the non-Africans.

The question of land tenure during the colonial administration might have made sense if it was the Africans demanding 'protection'. Admittedly, there were African chiefs who were paid by the colonial administration and who saw the maintenance of their traditional authority in the legal 'enclosures' that were put on their people in the reserves and tribal lands. Such were people like Eliud Mathu who stated,

"It is on the land that the African lives and it means everything to him. The African cannot depend for his livelihood on profits made through trading. We cannot depend on wages. We must go back every time to the only social security we have - the piece of land."126

It is equally true that the view expressed by Mathu might have appealed to the masses in the rural areas who preferred to live under the old traditions and customs and who did not have any great desire to adopt the ways of the non-Africans in the towns. On the other hand, the overwhelming majority of the urbanised Africans and those who had acquired some kind of education in either government institutions or missionary schools, were anxious to better themselves socially and economically. They were striving to learn from the non-Africans the methods of building better lives for themselves and for their children. Many wished to emulate the social, economic and political habits of the non-Africans. They were told that it would be better if they stayed in their villages and assisted on their fathers' shambas. Yet, they saw that the urban centre provided opportunities of employ-

ment, recreation and entertainment. They did not fail to notice that it was the town dweller rather than the rural dweller who wore nice clothes, rode a bicycle or drove a car and lived in permanent houses and walked on paved roads and played in well-planned and well-kept parks.

Consequently, they saw, quite rightly, that the appeal on the part of the colonial administration was intended to keep them backward. They disobeyed and in doing so they went to the towns whether or not there was a possibility of being employed.¹²⁷ Some found employment and poor accommodation in the peri-urban areas of the towns and municipalities. They were later joined by their relatives and friends. They continued to live in the slums and shanty towns but they were relatively better off than their tribesmen left in the villages.

Their existence in the slums and shanty towns was barely tolerable. They therefore demanded an equal share of the national wealth. To do so they had to organise themselves - hence the birth of trade unions and nationalist political parties.¹²⁸ Nationalist movements began to demand more arable land, more facilities in urban centres and a share in the professions and trades.

In Uganda, associations like the Bataka began to press for African firms to process coffee and cotton, a trade that had all along been dominated by the Asians. Many of the chiefs realised that it was an advantage to have some land nearer the colonial administrative centres where building and trading activities were fetching higher prices for land than the traditional tributes from Mailo land.¹²⁹ They therefore put claims to lands adjacent to urban centres and bought out anyone who may not have been educated enough to realise what was happening. They got registered as individual proprietors and by the time the urban authorities came to acquire more land

for extension they found that they were surrounded by land belonging to different chiefs and individuals who, moreover, showed a bargaining power of asking for realistic compensation. In cases where the land was not needed or too complicated to interest the urban authority, the proprietors or their tenants and sub-tenants constructed modest buildings and let them at exorbitant rents to the many urban residents, both employed and unemployed, who had no alternative accommodation. Most of these developments were unplanned and unauthorised by the colonial administrations and their agencies. They were poor in design and quality because the developers had no savings or loan facilities to improve them. Moreover, they lacked the necessary guidance and advice.

From the earliest period of British colonial administration, Kenya had attracted a considerable number of European settlers. They selected the best arable lands in the territory and settled to found extensive farms. Their claims were guaranteed under the law.¹³⁰ Not unnaturally, the Africans began to protest against a policy which deprived them of the best lands in the country. They demanded a share in the richer areas of the 'White Highlands' which had been declared European territory. Their demands were later to develop into national political movements like the Mau Mau whose main activities came to be directed against the colonial government and the white settlers. By the beginning of the 1950's national leaders could be heard addressing international conferences thus,

"We must go back every time to the only social security we have - the piece of land. The land stolen must be restored because without land the future of the African people is doomed. God will hear us because that is the thing he gave us."¹³¹

It can therefore be said that the colonial policy of land tenure in East Africa contributed to the passion and sophistication as well as to the tools with which the nationalists fought or campaigned for the independence of the region. Moreover, the policy meant that when independence came, the majority of the Africans were residing outside the urban centres and only a few of them had had any relationship with the running and administration of the urban environment. Fewer still had the means or the technical knowledge to manage urban planning and development. It is with this background that the next section is discussed.

Section (c): Post-Independence Land Law Reforms and Policies

In spite of the conclusion reached at the end of the previous section independence in East Africa did not bring with it an immediate rush on the part of the Governments to reform Land Law. The nationalists may have used its defects, among others, as instruments for accelerating the coming of independence but when it came, they found that there were other priorities in nation-building, legitimisation of power, alteration of the constitution and the ever-present fight against hunger, disease and ignorance.¹³² Inevitably, these other priorities occupied the attention of the new governments for most of the early years after independence. It is perhaps in Kenya that the land issues, having been much more fundamental during the colonial administration, continued to occupy the urgent attention of the Kenyans and the British government especially as to what was to happen to the European settlers in the White Highlands.

As Nyerere had already given warning before the independence of Tanganyika, he and his colleagues were ready to abolish the system of freehold and establish what they regarded as a truly African system of land

tenure. In Uganda, the main confrontation would be between the central government and the feudal character of land tenure in the Buganda kingdom. However, none of the governments was prepared to risk the immediate displeasure of the land-vested interests until there was an assurance that the ascendancy of the government's power over those interests was supreme. It was not until each of the three governments had contained divisive elements within the state and persuaded the political front that it returned earnestly to the sensitive issue of Land Law reform.¹³³

Of the three East African countries, only Tanganyika, latterly Tanzania, has had far-reaching land reforms, albeit affecting a small number of people. Within two years of obtaining independence Tanganyika enacted the Freehold Titles (Conversion and Government Leases) Act.¹³⁴ By this Act all the land in Tanganyika vested in the President of the Republic and all freehold estates were converted into Government leases for a maximum duration of 99 years. Crown Land which by now had become public land continued to be occupied and used by the Africans in accordance with customary law, subject to compulsory acquisition for public development purposes. The Act, however, introduced a new form of taxing all the land whether occupied as government lease or customary tenure. The rents charged for the latter kind of land occupancy are merely nominal.

No rent is payable in respect of land used exclusively for the purpose of public worship or exclusively for both public worship and burial. A person holding a government lease may not dispose of it without the consent of the Commissioner for Lands and invariably consent will not be given unless development requirements, if any, are complied with. By the Act the government in effect nationalised the land

and became the sole landlord throughout the Republic. The motivations for this radical departure from the original policy were ideological commitment to a socialist form of development, the need to remove the evils of the freehold system and the creation of favourable conditions for effective land development according to nationally determined goals and objectives. The rationalisation of the policy was based not on the motivations but in what has been called in Tanzania the roots and principles of African Socialism. These were declared by the President and affirmed by the official party's manifestoes and declarations:-

"A true socialist state is one in which all people are workers and in which neither capitalism nor feudalism exist . . . (and) no person exploits another, but everybody who is able to work (unlike children, the aged, cripples and other unemployable) does so and gets a fair income for his labour, . . . and incomes do not differ substantially."¹³⁵

In order to realise these objectives it was necessary to raise the standard of living of the people and under the circumstances of today in Tanganyika it was necessary to increase production through land development. The policy was extended further to cover areas hitherto unoccupied in rural areas. Under the Land Tenure (Village Settlements) Act,¹³⁶ on the formation of a new village settlement, the Commissioner for Village settlement who is a corporation sole, acquires an automatic right to foster and enforce economic development of the village. Again, the purpose of the Act was to curtail customary land tenure practices and to promote modern farming and economic development. Although the settlement is supposed to be administered under a co-operative basis, each individual settler has what are known as derivative rights, namely to construct a homestead or cultivate on a plot within the village settlement. Kanywari has observed that the

scheme of village settlements, though advantageous in the sense that it promotes controlled planning and reduces the incidents of customary tenure - being inter-tribal in inception, have not shown any appreciable successes as had been hoped by the policy-makers. In order to implement the policy of 'African Socialism' the government also introduced the Agricultural Products (Control and Marketing) Act¹³⁷ which established comprehensive machinery for controlling and regulating the cultivation, production and marketing of agricultural products. Agricultural Products Boards were constituted throughout the Republic. Noting all these reforms it became usual to hear Tanzanian politicians and leaders proclaiming that,

"All land now belongs to the nation. All land in Tanzania is public land, Tanzanian soil is not for sale. All land belongs to the government and individuals only have the right to use and occupy it."¹³⁸

In spite of the political slogans it soon became clear that nationalisation of the land was not sufficient to bring about African socialism or end exploitation of all land users and occupiers. First, there was not an adequate machinery of inspection to ensure that all the land was used to best advantage. Moreover, the government may have owned the land but it did not own the buildings and other developments on it. As long as the occupier developed his land in accordance with the government policies and as long as he regularly paid his government rent he was at liberty to charge any price for his goods and to demand any rent for his building. Consequently, the prices charged for products and the rents demanded for buildings had to be controlled as well. The attempt to legitimise the new policy was achieved by the imposition of a leadership code on public officials. The Interim Constitution of Tanzania, Acts 63 of 1965 and 2 of 1967¹³⁹

prohibited certain leaders and officers from renting houses. Recently, the policy was extended to the acquisition under compulsory powers by the government of all buildings whether commercial or residential and whether publicly or privately owned. Thus, not only does the government own the land and the buildings but it determines how the same shall be developed and priced. This may have eased the task of the people responsible for urban planning and development considering that most of the buildings to let are invariably found in urban centres.¹⁴⁰

In Uganda post-independence legislation has had little effect on both customary land law and Mailo land. The Public Lands Act of 1962¹⁴¹ was nothing more than a revisionary measure in view of the new situation after independence. It left intact all the then existing private rights in land and vested the Crown lands into Local Land Boards which were authorised to exercise the same powers previously exercised by the colonial administration under the Crown Land Ordinance. For practical purposes, the Local Land Boards were to have the same powers as registered proprietors of freehold land. However, through inexperience, political manoeuvring and nepotism¹⁴², the Boards did not function as efficiently and equitably as the framers of the Act had envisaged. The Boards consisted of local politicians and influential members of local communities and the political atmosphere in Uganda at the time was such that all public decisions whether relating to land or to other matters were influenced by political or tribal considerations.

At the same time the central government which functioned on the basis of a federation of these political and tribal factions found itself powerless to effect any measure of reforms. In 1966 the federal structure of administration in

Uganda was abolished and in the following year all kings and traditional rulers were constitutionally abrogated.¹⁴³ Thereafter the government proceeded in terms of reforming Land Law throughout Uganda. The opportunity came in 1969 when Parliament passed the Public Lands Act.¹⁴⁴ All the local Boards were abolished and instead a national Land Commission was created and vested with the same powers originally exercised by the local Boards. However, the Act was not as radical as the advocates of reform had hoped. It preserved individual ownership of Mailo land and all the titles registered under the Registration of Titles Ordinance as amended. With regard to land held under customary law the Act preserved the rights of the occupants except that if any of them wished they could

"at any time, apply to the controlling Authority to grant him a leasehold estate in the public land occupied by him at the time of such application; and the controlling authority shall, in accordance with the provisions of this Act, make such a grant."¹⁴⁵

The official estates had been dealt with by the constitutional changes introduced in 1966. The first step towards abolishing them was taken by the 1966 Interim Constitution which declared all official estates in Buganda, Toro and Ankole, except those of the rulers, public land and vested it in the various Local Land Boards. This was followed by the enactment of the Public Lands (Rents and Profits) Act, 1966,¹⁴⁶ which made it obligatory for the previous owners of official estates to hand over the title documents, any rents and any other income, to the secretaries of the Local Land Boards. People occupying official estates in Buganda were no longer to be affected by the Busuulu and Envujjo Law. In 1969, the tenants in the former official estates became the tenants of the Land Commission.¹⁴⁷ The Commission was

entrusted with two main functions. Firstly, it had authority and full power to grant estates and create rights and interests in favour of individuals or corporations.¹⁴⁸ These powers were limited in the following respects: Section 19 provided that for the Commission to sell any land held by it, demolish any buildings or other erections on it, make a grant of freehold in public land, grant a lease of public land outside an urban area to a person who is not an African citizen of Uganda, or where the land is outside an urban area and is occupied wholly or partly by a person or persons holding by customary tenure, it needed the written consent of the relevant Minister.

Further, no grant of a lease of more than 500 acres of public land or of any part of land declared to be a National Park could be made without such prior consent. Secondly, the Commission was given the powers of management and control of public land and of imposing conditions for its development. It has the power of re-entry in default of observing the conditions and implied covenants. The right of re-entry is not to be exercised where the breach is capable of being remedied immediately unless the party in default is given notice to effect the remedy and fails to do so within 8 weeks of receiving the notice. It may be deduced from this discussion that apart from centralising the bodies responsible for the administration of land policy, Uganda has maintained the tenures and rights almost in the same form and practices which prevailed during the colonial administration.¹⁴⁹ It is no wonder that the current Five Year Development Plan of Uganda which was formulated in 1971 should state that one of the problems faced by planning and development agencies, particularly in urban centres is the existence of the various land tenures and practices.

With regard to Kenya, the process begun just before independence of gradually replacing willing European settlers with Africans was vigorously continued after independence.¹⁵⁰ In 1960 the closure of the Highlands to all but those of European descent was terminated and it became possible thereafter for African farmers to buy land in the former White Highlands.¹⁵¹ The envisaged scheme of buying out Europeans called for the expenditure of enormous funds which Kenya could not possibly supply. Consequently, the Kenya government negotiated with the British government for funds. What the British offered was still inadequate. It was necessary to seek further development funds and accordingly, the Kenya government obtained more money from the International Bank of Reconstruction and Development, the Commonwealth Development Corporation and the Federal Republic of Germany.¹⁵² In 1963 the Department of Settlement was set up and later replaced by the Settlement Fund Trustees which is a body corporate established under the Agriculture Act.¹⁵³ It is headed by a Director who is assisted by a deputy and various technical and administrative officers. When a block of land has been earmarked for settlement, and its value assessed by professional valuers, the purchase price is negotiated between the vendor and the buyer on the basis of a willing buyer and willing seller.¹⁵⁴

The new settlers are normally landless people who must occupy and use the land in accordance with government development plans and schemes. One of the disadvantages of the scheme feared at the time of its inception was that it would lead to the fragmentation of the land in the Highlands which had hitherto been responsible for the largest contribution to Kenya's revenue. Inevitably, fragmentation resulted but it has been observed that the agri-

cultural production of the area has not necessarily suffered and that in fact the national production of certain crops has increased.¹⁵⁵ In respect of the land which had been held under customary law, the Kenya government decided to continue with the procedure of adjudicating individual claims and consolidating them into land titles under the Registered Land Act 1963. After independence there had been intensified demands for individual land ownership and consolidation.¹⁵⁶ In 1965 a joint Kenya-British mission under the chairmanship of Lawrance who had previously been the permanent Secretary for Land Tenure in Uganda, was appointed to carry out a study of Land Consolidation and Registration in Kenya. It was also to advise on an accelerated programme of such work and its costs and to suggest the best means of implementing the programme.

Among their major recommendations were the following: that besides individual ownership of land there should also be group ownership, both capable of being statutorily provided for and registered under the Registered Land Act; that there should be adequate staff for the three departments concerned with land, namely, Lands, Surveys and Land Consolidation departments; that the law should be amended to allow appeals to the High Court on questions involving land demarcation, claims and distribution and that a simpler and speedier form for the processing of consolidation and registration applications be evolved. The government accepted most of the Lawrance recommendations by enacting the Land (Adjudication) and Land (Group Representatives) Acts of 1968 to supplement the then existing Land Legislation.¹⁵⁷ It has been estimated that by 1976, all the land in Kenya will have been dealt with and entered on the various land registers as being either public land, municipal land or in individual or Group

ownership.¹⁵⁸ The Kenya policies and Laws enacted since independence indicate a preference for individual ownership of land, at any rate, as far as modern planning and development is concerned. In spite of these policy trends towards the issue of land in Kenya, land legislation remains largely uncoded and too rigid to assist those tackling the planning and development problems of the country. Commenting on this aspect of the problem, Maini writes,

"When a need for change in the law arises the aim should be to explore all possibilities to bring into line an existing law to conform with the change. So long as the Indian Transfer of Property Act and the Common Law of England continue to dominate the Kenya Land Law scene, it will remain a complicated tangle and the difficult process of distillation of rules will continue. It is unfortunate that nearly five years after the introduction of the Registered Land Act the registration and conveyancing law is still not cohesive, easily comprehensive, and realistic."¹⁵⁹

A number of reasons prompted the examination of land tenures and practices in East Africa. In addition, the law which governs the ownership and private use of land also, directly or indirectly, affects the extent to which powers of compulsory acquisition for public purposes and development should be exercised. It also affects the amount of compensation payable in the event of such acquisition and therefore the sources available for financing urban planning and development. Further, the various land tenures and practices have been largely responsible for the rather insignificant part the Africans have hitherto played in the development of the East African urban centres.¹⁶⁰ There is a hypothesis widely projected by the Five Year Plans that if the urban centres are to be developed at a reasonable and manageable pace it is necessary that the rural areas should compete with them in attracting the working population, especially the educated class.

However, neither the colonial administrations nor the post-independence governments, with perhaps the exception of Tanzania since 1967, have done enough in investing money for agricultural expansion.¹⁶¹ The African was regarded as a foreigner in the urban centres of his country by the colonial rulers. It is surprising that his own nationalist governments have done so little to change this policy. Admittedly, they have freed him to enter and leave the city as he pleases but he is still a foreigner according to the circumstances of the latest developments. It may be questionable whether any change in the ownership and control of land might yield better results but since reform is also related to land acquisition and compensation it may be appropriate to discuss this aspect before examining the notions and consequences of land ownership.

CHAPTER THREE: . ACQUISITION OF LAND FOR PLANNING AND DEVELOPMENT

PART I: ACQUISITION OF PRIVATE PROPERTY FOR PUBLIC PURPOSES

SECTION (a): INTRODUCTION

The fact that land in East African urban centres has been declared public land does not lessen the necessity for the government and public authorities to possess wide powers of compulsory acquisition of land for urban planning and development. There are a number of reasons why this necessity should arise. It has been observed that urban centres could only be occupied through the grant of licences or leases.¹ Where the licence or lease was issued the holder was entitled to erect buildings whether temporary or permanent and to carry out such other developments as he wished so long as the regulations or conditions laid down by the township authority or some other body or person administering the area were satisfied.² In all cases the government is entitled at any time to terminate the licence or the lease if the land is required for a public purpose. Termination means that the licensee's or tenant's improvements have also to be compulsorily taken over and the licensee or tenant, as the case may be, is entitled to claim compensation for the buildings, crops or other improvements he may have made during the term of occupancy. Thus, even allowing for the fact that the planning and development is to take place within the urban jurisdiction, it is still possible to come across private property and interests in land which have vested over the years through the grants of leases and licences. The demolition of slum dwellings affects the rights and interests of slum dwellers who need to be compensated and housed elsewhere. The extension of civic buildings and the reconstruction of the

old streets and roads to cope with community services and traffic needs respectively, mean the interference with residential and commercial buildings let to private residents and proprietors with unexpired leases and licences. All may call for compensation and the provision of alternative space and accommodation.

The urban centres created during the colonial period were not always large enough to accommodate all the developments whether actual or contemplated. In most cases the urban jurisdiction did not extend beyond a two or three miles radius outside the administrative or trading centre. The peri-urban areas continued to be occupied by private individuals under the various land tenures and titles. Consequently, any sizeable plan for development would invariably encroach upon some individual's estate or interest in the peri-urban area. The tendency to encroach upon private rights in land has increased since independence because of the rapid growth of the urban population and the emphasis on industrial and economic advancement of the region with the indigenous inhabitants participating.³ Writing about the city of Nairobi, Ominde states,

"The rapid growth of population of Nairobi has presented development authorities with a number of problems. These broadly include the need for land, the growing problem of the distance of residential areas from the place of work, and the priority in housing investment

A closer examination of the area pattern will show that expansion of the city's housing land is limited in the south by the Game Park and in the east by the needs of the International airport. In the south-west and in the north, the low density housing developments have taken up most of the available land..... Newer residential areas east of the core being located further and further away from the work place in the centre of the city with consequent rise in costs of transportation charges."⁴

Leaning^{4a} makes similar observations in respect of urban centres in Tanzania where he saw an ever increasing contrast between planned areas cutting into the indigenous, spontaneous and unplanned village and town fabric and the urban centres well planned and formalised by public authorities.

Urban facilities and services such as water supply, electricity, playing fields, roads and educational institutions cannot all be founded and run on public land. Occasionally someone's private land will have to give way for their establishment and management.

THE DOCTRINE OF EMINENT DOMAIN:

This chapter examines the laws which enable the government and public authorities to acquire land for public purposes. It covers the powers of compulsory acquisition of property, the rules and procedures which must be followed in the exercise of those powers and the compensation and other remedies available to persons and bodies affected. The first point to be examined is the basis and rationality of the doctrine of eminent domain or the justification of vesting powers in public authorities to acquire private land and property for the common good of the general public. An English Dictionary⁵ describes the doctrine of eminent domain as being of American origin without a foundation in the common law of England. However, the compilers of the dictionary concede that the expression has been given meaning in the United Kingdom by various Acts of Parliament under which land is acquired, without the consent of the owner, for works of public utility. It may also be observed that even under the common law of England it was accepted that the crown had a right to acquire and expropriate private property in the defence of the realm.⁶ In the American context, Black's Law Dictionary describes

the doctrine of eminent domain as,

"The right of the state, through its regular organisation, to reassert, either temporarily or permanently, its domain over any portion of the soil of the state on account of the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorise the appropriation of the same to public purposes, such as the opening of roads, construction of defenses or providing channels for trade or travel."⁷

In East Africa, Kiapi has observed that the Governments of East Africa have already asserted the rights of eminent domain to control the acquisition and use of private property. He continues,

"In all the three countries it is the theory and practice that the state has the power of promoting the public welfare by restraining and regulating the use of individual liberty and private property. Though the three governments exercise control over the use of all kinds of property, perhaps the control and exercise over the acquisition and use of land is the most intensive. This ranges from mere right of entry to compulsory acquisition."⁸

It can be said that nowadays the doctrine of eminent domain, in all its manifestations, is universally accepted by modern states and the only variations are to be found in the extent to which and the manner in which different states use it and the measure of rights allowed to the persons who are adversely affected by the operation of the doctrine. In time of war the power of compulsory acquisition of private property may be resorted to irrespective of the state's form of government and constitution and irrespective of whether or not the development of the

land is carried out largely by private citizens or by public authorities.

On the other hand, in time of peace, this exercise may depend on those factors and most probably it will be resorted to more often in communities which promote public development of land at the expense of private development. The reverse is true in respect of communities which prefer private enterprise to public enterprise. In countries like the United Kingdom where there are two political parties almost equally supported by the electorate, with one placing emphasis on public development and the other on private enterprise, the issue of compulsory acquisition becomes complicated and depends to a large measure on which of the parties is in government for the time being.⁹

One of the arguments against the doctrine of eminent domain is that it affects the guarantee of security of tenure or of title in land and therefore discourages individuals from acquiring and investing in private owned land or property for development since they are aware that the government may at any time decide to acquire that particular land compulsorily and thereby extinguish any rights or interests they may have personally acquired in it. Thus, Maini observes that in both Kenya and Uganda there has been some concern that compulsory acquisition of land by a Government goes to the root of the principle of security of title and affects private development of land while in Tanzania the conversion of freeholds to leaseholds estates has not only deprived proprietors of their freehold estates but has also diminished the security of mortgagees. However, as the learned author rightly observes, if the intention of the Government is to promote the development of the particular area and to improve the economic and social conditions of the country the criticism becomes less important especially where

compensation is available to those persons deprived of their estates and interests and when the land is utilised for the public purpose for which it was originally acquired.¹⁰ The only controversy to be resolved then becomes whether it is public authorities or private individuals who are more capable of developing the land. In the case of East Africa, the bulk of land use development is the responsibility of public undertakers mainly by necessity. This being the case, it seems only reasonable that the Governments or their agencies should have the power to control and direct the use and development of land whether such land is in public or private ownership and whether or not the developer is a public authority or a private individual. Even in the United Kingdom where the political parties often differ as to priorities for planning and development policies, it has been noted that land use planning and development was effectively nationalised.¹¹ This became necessary partly because there is not enough land in the country to give private owners and developers a freehand, and partly because the problem of modern society in relation to land and property are such that the Governments must have the power to guide and control everyone concerned with them.

COMPULSORY ACQUISITION AND NATIONALISATION

Compulsory acquisition of land and property is often equated with nationalisation by some who are affected and nationalisation has provoked a number of studies in recent years. Nationalisation as a legal institution has been defined by Foghel as,

"The compulsory transfer to the state of private property dictated by economic motives and having as its purpose the continued and essentially unaltered exploitation of the particular property."¹²

White¹³ examines the concept of nationalisation on the understanding that it is a measure which sets in motion a legal process whereby private rights and interests in property are compulsorily transferred to the state or to some organ created by the state, with a view to the future exploitation of those rights and interests by and for the benefit of the state. It is interesting to note that the definitions provided by the two writers do not reveal any value-judgment as to whether or not nationalisation is a desirable thing. This may be because the definitions are made in the context of capitalist-oriented economies which tend to glorify the individual efforts of private entrepreneurs. On the other hand, writing on a socialist concept of nationalisation Letzarov view is that

"nationalisation is the transformation, in the public interest of a superior kind, of specific assets or activities which are means of production of the community with a view to their utilisation in the public interest."¹⁴

However from the view point of compensation the three writers seem to accept that nationalisation is distinguishable from compulsory acquisition of land in that the motivation and the political and economic significance of nationalisation and the means by which it is implemented are different from those involved in the compulsory acquisition of land. Be that as it may, in both Tanzania and Uganda compulsory acquisition of land has been translated in terms of political and economic measures

of nationalisation. Thus, the Arusha Declaration states,

"The way to build and maintain socialism is to ensure that the major means of production are under the control and ownership of Peasants and Workers themselves through their Government and their Co-operatives..... These major means of production are: land; forests; mineral resources; water; oil and electricity; communications; transport; banks; insurance; import and export trade; wholesale business; the steel, machine-tool, arms, motor car, cement and fertilizer factories; the textile industry; and any other big industry upon which a large section of the population depend for their living, or which provides essential components for other industries, large plantations, especially those which produce essential, raw materials."¹⁵

The declaration was followed by the enactment of five major Acts intended to implement the policies indicated.¹⁶ Some of the Acts related to Land policy have already been discussed in the previous chapter. Nationalisation measures introduced in Uganda since independence have been less extensive and effective compared to the Tanzanian experience. Since the military coup d'etat in 1971, all land and property belonging to non-Africans in Uganda have been expropriated and taken either by the military government or transferred to Ugandan Africans.¹⁷ In Kenya, there has been no wholesale nationalisation of land or property except in so far as it has affected certain Europeans in the Kenya Highlands, mainly on a voluntary but political basis and certain Asian traders in urban centres. However, both the land and the property have been taken over and immediately transferred to Kenyan Citizens to be developed or run on the same basis as their predecessors.¹⁸ Generally speaking it can be said that compulsory acquisition of land in East Africa seems to conform to what one

writer on the subject has described as

"The general social welfare (of the community) which is best served when individual property claims are subordinate to the common will, when land use must be guided along communally predetermined channels and when the Governments have absolute control and the last say on how every piece of land is to be used."¹⁹

It can be seen from the above description that the concept of compulsory acquisition of land is quite different from the concepts which prompt any government to nationalise private property.

SECTION (b): THE LAW RELATING TO COMPULSORY ACQUISITION OF LAND
CONSTITUTIONAL GUARANTEES

One of the contentious issues discussed at the various conferences for the independence of the three East African territories was the determination of the form of guarantee for the protection of private property.²⁰ Besides the concern shown by the immigrant communities who occupied superior positions in the economic structure of the region, there were minority tribes who expressed the fear that unless the constitutions guaranteed private property the new governments emerging with independence would nationalise or compulsorily take over land, buildings and other property without formality or compensation. As a result of the negotiations at the conferences both Kenya and Uganda accepted constitutional instruments that incorporated provisions similar to the Bill of Rights. Tanganyika rejected the bill of rights but instead incorporated a general proposition in her constitution to the effect that the right to property was one of the inalienable rights of the individual. The constitutional provisions about private property in Kenya were similar to those of Uganda. It is to be noted that the idea of acquiring land for a public purpose was not new in East Africa. The acquisition of land compulsorily in East Africa was governed by the Land Acquisition Act, 1894 of India which had been incorporated into the East African laws during the colonial administrations. Incorporation had been achieved under article 3 of the Africa-Order-in-Council, (later replaced) by the Uganda Order in Council 1902) under which the British Secretary of State for the Colonies was empowered to adopt certain British Acts and other Acts prevailing in other colonies for use and application in

the British territories of Africa.²¹ Orders so made continued in force with slight amendments until the attainment of independence. The order would provide for matters such as the declaration of the intended acquisition of land, enquiries to be held about the land so declared, claims and appeals for compensation and the rules and regulations as well as the procedures to be followed in the exercise of the powers of compulsory acquisition of land.

Since her independence, Uganda has had three constitutions, each of which introduced certain changes that radically altered the previous position in respect of some fundamental features of the constitution. The one thing which has remained unaltered, at any rate in theory, is the entrenchment of the fundamental rights and freedoms of the individual which by provision include the right to own and enjoy property. Article 13 of the 1967 constitution, the third in the series, provides,

"No property of any description shall be compulsorily taken over and no interest in or right over property of any description shall be compulsorily acquired except where the following conditions are satisfied, that is to say.....22

The article then proceeds to enumerate and describe the circumstances under which property may be compulsorily taken and acquired. One of the purposes for which property may be acquired is a public purpose. The acquisition is only valid if it is made with reference to any written law the provisions of which specifically refer to the taking of possession or acquisition of property and contains a provision for the prompt payment of adequate compensation and the securing to any person having an interest in or right over the property, a right of access to the High Court. The High Court is to determine the extent of his interest or right, the legality of the taking

of possession or acquisition of the property and the amount of compensation to be paid. Until the military coup d'etat in January 1971, the constitution was the supreme law of the land and it prevailed against any other law which was in conflict with its provisions, at any rate, to the extent of inconsistency. Moreover, the chapter incorporating the rights and freedoms of the individual was entrenched by Article 3(2) of the constitution in that its provisions could not be altered or amended by Parliament except by a two-thirds majority on the second and third reading of a Bill proposing the alteration or amendment. Further, only the elected members of the National Assembly as opposed to the nominated ones, were entitled to participate in any vote intended to affect the entrenched clauses of the constitution.

Between 1969 and 1971, the case of Shah v. The Attorney-General of Uganda,²³ was decided in the High Court of Uganda and the Court of Appeal for East Africa, debated in the Uganda National Assembly and discussed in learned legal journals, on the question of how far the Government and Parliament could alter or ignore the constitutional provisions guaranteeing private rights to property. The applicant had been awarded a judgment decree in respect of a contractual debt owed by the Uganda Government. The Government refused to honour the decree upon which the applicant initiated proceedings for an order or mandamus to force the Secretary to the Treasury to pay. While the proceedings were pending the Government managed to convince Parliament to pass the Local Government (Amendment 2) Act which purported to invalidate retrospectively the proceedings and to render illegal any transactions which gave rise to the applicant's cause of action unless such transactions were first approved by a minister. The applicant successfully challenged the validity of the Act. In a declaratory judgment, the Uganda constitutional court found that the Act

conflicted with the constitution and ordered the mandamus application to be proceeded with. The mandamus order was duly granted. The Government appealed against it but the appeal was rejected by the Court of Appeal for East Africa which disclaimed any jurisdiction to entertain it.²⁴ The Secretary to the Treasury continued to show reluctance in paying the judgment award but in the end he was forced to pay under a threat of a warrant of arrest.

Since the passing of the 1967 constitution and the decision in Shah v. The Attorney-General of Uganda, the country has experienced yet another constitutional change, this time by way of a military coup d'etat.²⁵ Under a subsequent military proclamation, the constitution, though not formally abolished, is no longer the supreme law of the land and may be overridden by military orders and decrees. Nonetheless, the military Government has, in a declaration, reiterated the principle of private property by affirming that the human rights and freedoms as envisaged in the 1967 constitution will be preserved. It would seem however that the declaration is only for the benefit of the Uganda African for since then subsequent measures have been taken designed to expropriate land and property belonging to non-Africans of nationalities other than Ugandan. It may be argued however, that these expropriation measures were contemplated in the 1967 constitution in that Article 64 gave the President sufficient authority, with the advice of the Cabinet, to act outside the normal rules and procedures of the constitution if "exceptional circumstances exist which render it necessary for him to take immediate action".²⁶ There have been several measures of partial nationalisation and compulsory acquisition of private property in East Africa which might have necessitated authorisation by an Act of Parliament but which were taken without it on the grounds that exceptional circumstances existed.²⁷ When the then President of Uganda addressed

the nation in May 1969 that with effect from May 1st the state was acquiring sixty percent of all the major means of production controlled by foreign companies he did not address himself to those provisions of the constitution which required specific legislation for such an act. Since the military takeover in Uganda, there have been occasions when private property belonging to anyone has been subjected to compulsory acquisition without form or procedure that could be described as predetermined by any existing law.

Section 75 (1) of the Kenya constitution which is similar to that discussed in the Uganda constitution provides,

"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say -

- (a) The taking of possession is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public interest; and provided that if Parliament so provides ... the right of access by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property....)"28

Recently, the Kenya Government ordered the eviction of a number of British Asians operating businesses in the Republic without any specific reference to the provisions of the constitution and without asking Parliament to pass a specific law legalising the expulsion and dealing with the property

likely to be expropriated.²⁹ Similarly, the Tanzanian wholesale nationalisation measures taken since the Arusha Declaration may have been followed by the enactment of special statutes but certainly seem to be in **derogation** of the constitutional preamble which states that private property as an interest of the individual is among the **inalienable** rights and freedoms. In the developed countries of the West, nationalisation and compulsory acquisition of private property are preceded by controversial debates and prolonged procedures of legislation.³⁰ The only time that such measures are taken without much formality and immediately would seem to be during the times of war. It would seem also that the latter measures may be taken without any provision made for the compensation of the deprived parties. This is particularly the case in Britain since the passing of the War Damage Act, 1965 following the decision in the Burmah Oil Co. v. Lord Advocate.³¹ On the other hand, the situations described in the context of East Africa have occurred during peacetime. It is therefore reasonable to ask for the grounds on which they may be justified. It has been argued that the political and economic conditions obtaining in East Africa are such as to justify drastic and apparent revolutionary measures if any real benefits are to accrue to the indigenous inhabitants. In order to be effective, a nationalisation measure has to be immediate otherwise those who do not approve of it might frustrate the intentions of the Government. The opposers must be taken by surprise. In the developing countries, moreover, political and economic crises may be compared to conditions of war in the developed world.³² Thus, General Amin of Uganda speaks of the Economic War in his country. However, at this stage, we concede that we move from the purely legal to the purely political level of understanding. In spite of what has been said, it is still reasonable

to assume that with variations pertaining to each territory, the powers of public authorities to compulsorily acquire land and interests in land are still subject to constitutional provisions, the rule of law and to the jurisdiction and power of the Courts to determine the legality of acquisition and the adequacy of any compensation offered to the deprived private individuals.

LAND LEGISLATION DEALING WITH COMPULSORY ACQUISITION:

Since our main concern is with urban planning and development, our examination will be limited to those laws in East Africa which deal specifically with the compulsory acquisition of land. Besides the constitutions, there are other statutes and regulations under which the Governments and public authorities in East Africa may exercise the powers of compulsory acquisition of land. Generally speaking, power to acquire land compulsorily is conferred by various statutes dealing with public services which the East African Governments have to administer. For instance, under the Electricity Act, the Electricity Board may, with the approval of the minister, acquire an easement in land for the right of construction, laying, supporting and maintaining electric cables and for installing electric transmitters. Similar powers exist for the ministries of Information and Communications with regard to laying telegraph and telephonic wires. Under the Water Works Acts, the Water Boards are empowered to acquire compulsorily any land required for laying water pipes and digging communal water bore holes. Under the Roads Acts, the chief Engineer may, with the approval of the Minister, acquire land compulsorily for constructing new roads, extending old ones and building camps for road builders and constructors.^{33a}

Under the Forests Acts and the Preservation of Amenities legislation, appropriate public authorities may acquire land for the purposes of declaring it forest reserves, national parks or preserved amenities, respectively. These individual statutes are designed primarily to promote the services described in their respective provisions and often not a great deal of land is involved.³³ Under the Local Government Acts, local authorities are directed to do or perform two types of functions. These are enumerated in the schedules to those Acts³⁴ and may be described as either obligatory or permissive. For the performance of obligatory functions, a local authority is empowered to acquire land compulsorily for the establishment and maintenance of the services envisaged under those functions. Land may be acquired for building a school or a dispensary or for erecting thereon a remand centre or a market. The Acts contain provisions for the compensation of persons whose land or interest in land has been adversely affected by the exercise of the powers. From what has been said in respect of land tenures, estates and interests in land it may be appreciated that when one talks about the acquisition of land or interests in land one means certain estates and interests in the ownership or occupation of private persons in Kenya and Uganda and of rights or interests of occupation in the case of Tanzania. This is because both Kenya and Uganda admit of private ownership in land whether this is a type of freehold, leasehold, mailo land whereas Tanzania only allows leasehold and rights of occupancy under its land legislation.^{34a} However, whether one is claiming to own an estate, a leasehold or a right of occupancy, the fact that the Government or public authority has decided to acquire his interest in that land and to take away that land for a public purpose or for the use of another individual may not

make any difference to the hardship he is likely to suffer or the measure of compensation he may demand. The value of a freehold and the development thereon may not be very much different from the value of right of occupancy in land and the investments expended by the holder of that right.^{34b} Even if there was a difference, the form and procedure of acquiring a freehold or leasehold interest should not necessitate the creation of a different law for the acquisition of a right of occupancy in land. It is for this reason that whereas the political and economic policies of land holding have tended to diverge in East Africa and land ownership has different connotations in the three territories, the legislation dealing with compulsory acquisition of land or interests in land has tended to remain the same throughout the region. For the same reason it may not be necessary to distinguish between the acquisition of property in private land and of property in public land except in so far as those distinctions actually exist in law and in so far as the interests acquired may be different and therefore call for different measures of compensation.

The greatest and far reaching powers of compulsory acquisition most exist under land law legislation and are exercisable when the land is either required for a public purpose or when it has not been utilised in accordance with Governments' declared land and economic policies as envisaged under the law. Some of these laws are of a general nature while others are specific to defined objectives. Thus, the Uganda Public Land Act, 1969 which vests all public lands in the Land Commission grants the commission a general power to

"acquire and hold land or rights, easements or interests in land, erect, alter, enlarge, improve or demolish any buildings or other erections on any land held by it, sell,

lease or otherwise deal with such land, cause surveys, plans, maps, drawings and estimates of the land to be made and do and perform all such other acts necessary for or incidental to the exercise of its powers and duties."35

Under section 118 of the Kenya constitution, the President, if satisfied that the use and occupation of any area of Trust land is required for any of the purposes specified, may, after consultation with the county council in which the land is vested, give written notice to that county council that the land is required to be set apart for the use and occupation for those purposes and, any rights, interests or other benefits in respect of that land that were previously vested in any Tribe, group, family or individual under African law shall be extinguished. Apart from the power to acquire land for a public purpose Tanzania has a provision within its Town and Country Planning Act to the effect that where it is thought necessary to acquire land to procure its development and the 'owner' has taken no reasonable steps to develop it, the Government may acquire it. On the other hand, section 24 of the Uganda Town and Country Planning Act provides that the Planning Board may compulsorily acquire land for a public purpose provided that such land is subsequently "used only for, or in connection with the scheme for which it is to be acquired and as approved or modified by the minister."³⁶ Similar powers of a definite nature and purpose exist in the respective laws of Kenya and Tanzania.

The form and procedure under which land may be compulsorily acquired are set out in the various Land Acquisition Acts. Although the three countries have preferred to rename and introduce certain amendments to these Acts since Independence, the basis of the legislation is

the Land Acquisition Act, 1894, of India.³⁷ There are provisions in each of the Acts which authorise the agents of the relevant Minister to enter on a piece of land, with a view to its acquisition, and to survey it, dig and remove samples, in order to ascertain its suitability for public purposes.³⁸ The Acts further provide that whenever the Minister is satisfied that any land is required by the Government for a public purpose, he may, by statutory instrument, make a declaration to that effect. None of the Acts have given a definition of what amounts to a public purpose. However, the analysis of the provisions of the Acts and the manner in which they have been implemented from time to time would appear to indicate that 'public purpose' is capable of the widest possible meaning even though none of the Acts reproduces section 6 of the Land Acquisition Act, 1894 of India which stipulated that the Minister's declaration would "be conclusive evidence that the land is needed for a public purpose". It is only when it comes to acquiring land or interest in land which has not been developed or utilized in accordance with land or economic policies of the Government, that the law appears to be more definite. For example, under Part II of the Land Acquisition Ordinance (Amendment) Act, 1965, of Tanzania, if the Minister is satisfied that all urban or peri-urban area has been basically developed for housing purposes and that the houses are unsuitable as urban dwellings and are unfit for human habitation, or are non-permanent structures, and that a scheme for redevelopment has been or is being prepared and that such redevelopment cannot be carried out by the owners of the houses themselves, the Minister may declare the area to be a redevelopment area. In the event of such declaration, all the private rights and interests in the land vest in the President.

The parties affected by the declaration are entitled to compensation.³⁹

Besides the power of compulsory acquisition there are wide powers of entry vested in the Government and public authorities.⁴⁰ For instance, notwithstanding the occupation of the land by the owner, tenant or licensee in all the three countries the Minister may, by written requisition, call upon the occupier to permit an authorised undertaker to enter upon the land and there execute major or minor public works and such an undertaker may be authorised to take and remove from that land stone, murrain or similar materials for the construction, maintenance or repair of public works.⁴¹ Moreover, agents of the Government or public authorities may enter the land at all reasonable times and view the state of any alienated public land and conduct geological surveys, dig and bore into the sub-soil and remove samples. In addition, the controlling authority of public land has the power at any time, and especially where the conditions of the grant have been infringed, to resume the occupation of alienated public land. The powers of the Minister, public undertakers, government and public authorities' agents and of the controlling authorities are subject to making good any damage caused to buildings and crops and compensation for the land or materials used or taken or affected by such entry, works or resumption of occupation, is available.⁴²

The decision of the Government or a public authority as approved by the Minister that land is required for a public purpose and ought to be compulsorily acquired is unimpeachable in East Africa. For this reason the laws provide that any subsequent court proceedings following the acquisition of land are to be limited to a consideration of the interests of the persons affected. It is therefore questionable whether it is only the minister or the public authority, as the case may be,

who have the exclusive wisdom to determine what is a public purpose and the land most appropriate for that purpose. The position in East Africa can be contrasted with those prevailing in the United States of America and the United Kingdom where both the declared public purpose and the land to be acquired can be challenged in courts of law. In the English case of Webb v. Minister of Housing and Local Government (1965),⁴³ the compulsory purchase order made by the Bognor Regis Urban District Council as confirmed by the Minister was challenged and declared void on the grounds that the powers of compulsory purchase had been exercised for a wrong purpose. The council had purportedly acquired the land for coast protection. The court found that not all the land acquired was necessary for coast protection. The council had thus acted ultra vires. A number of United States of America cases may be cited showing the individuals right to challenge the declared public purpose. In Denihan Enterprises, Inc. V. O'Dwyer,⁴⁴ a city and an insurance company contracted that the city would compulsorily acquire property opposite an apartment house which was being constructed by the insurance company. The city would then offer the acquired property for a lease at a public auction at a specific amount and the insurance company was to bid for it, and if successful, would build a garage there in accordance with the contract and lease. Apparently, half of the contemplated garage would be reserved as a private park for the tenants in the apartment house. The court held that the project was so imbued with a private purpose as to render the proposed compulsory acquisition invalid. In Fogge v. Port of Seattle,⁴⁵ the local authority was concerned about the status of the area as one industry city and attempted to achieve industrial balance by acquiring land regardless of marginal characteristics, for redevelopment and sale or lease to private industry. a

The court found that the authority was compulsorily acquiring fully developed land because it believed it could devote the land to a better economic use and that this was not for a public use. But even when the acquiring authority has been ultimately proved right parties affected have been given a prior opportunity to test the validity of the declared public purpose as Foltz v. City of Indianapolis⁴⁶ and Courtesy Sandwich shop. Inc. v. Port of New York Authority⁴⁷ clearly illustrated. In East Africa it is only when the compulsory acquisition order is in respect of "any house, building or manufactory" that the law permits the aggrieved parties to challenge the decision of the acquiring authority.⁴⁸ The challenge is limited to forcing the acquiring authority to acquire the whole house, or building or manufactory when its original intention was to acquire only a part thereof. The East African provisions on this point are similar to section 8 of the English Compulsory Purchase Act, 1965,⁴⁹ which provides that "no person can be compelled to sell a part only of any house, building, or **manufactory** if he is willing to sell the whole" unless the Lands Tribunal decides that to do so would not cause any detriment to the remainder or seriously affect the amenity or convenience of the house.

A number of reasons may be suggested for the principle that the Government and public authorities should have the sole right of determining what is a public purpose and the kind of land in which that purpose may be promoted. Firstly, we have observed that the major part of development in East Africa is carried out by the Government and its agencies. For this reason, it is necessary to allow the Government full discretion in determining the means of such development, namely the land. Secondly, the individuals' opinions of what is a public purpose are likely to differ from one person

to another, depending on their vested interests and immediate needs. It may be only the Government and other public agencies which are capable of reaching an objective and an all-embracing decision to benefit the whole community even when that decision relegates some interests belonging to particular individuals. . Thirdly, the principle avoids or lessens the delays that would occur if a planning decision were to be challenged at every stage. Fourthly, in East Africa, it is the Government and public authorities which have the capacity and the means, however limited compared to other countries, to investigate alternative choices in planning and development. It may be assumed therefore that whenever a public purpose is declared and a piece of land chosen there **have** been opportunities to examine and study other choices. Lastly another argument may be put forward. It seems a fact of life in East Africa that there is a reluctance on the part of the ordinary people to question Government decisions especially when those decisions are of a technical nature.⁵⁰ Consequently, it may be futile to provide for a power which may never be exercised or which may only be exercised by the privileged few whose interests and ideas are in contradiction to the notions of planning and development for the nation as a whole. Against these reasons, it can be argued that to enable the residents to question the validity of the declared purpose would bring public participation into the planning process-an idea that is currently fashionable in the developed countries.⁵¹ If the declared public purpose is related to the development of the area then the residents should be given an opportunity at the earliest stage to pronounce judgment on that purpose and consequently

on the development of their area. It seems a characteristic to the planning process in East Africa that, more often than not, the general public is not consulted on what is planned and therefore the device of allowing them to challenge the public purpose might serve as an alternative choice to consultation especially if the hearings are in public and the proceedings are published.⁵² Moreover, in places where the policy is that development should be undertaken by private undertakers and individuals, the principle that the Government and public authorities have an absolute right to compulsorily acquire land precludes the possibility of examining the capabilities and means of those private undertakers and individuals. It is therefore suggested that were the procedure of challenging compulsory acquisition orders and the public purposes allowed, individual proprietors and developers would be enabled to show that the 'public purpose' might be better served if they themselves carried out the development.

The necessity to challenge the declared public purpose is particularly desirable in the developing countries where the objects for which it may be declared are of indefinite number and where often the public authorities are inclined to accede to radical innovations of planning and development outside the predetermined laws. Thus, Crooks writes,

"The countries of the developing world, because they desire rapid and accelerated modernisation, are inherently committed to making sharp breaks not only with the existing momentum of change and development but also with the techniques followed

in many developed countries. The requirements of the situation propel the developing state toward "high risk" and experimental schemes which would be virtually impossible in a more risk-sensitive" modern state. Such changes are possible because the developing countries have little to lose and the investment constraints of the past are minimal..... In any case, the pressure for change in the developing world creates an opportunity for radical innovation, such as that of Brasilia, which would not be possible in the modern state. Indeed, investments having long-term consequences are yet to be made in the developing countries. The roles of the cities have yet to evolve, linkage and interaction systems still have to be designed and constructed. In fact, the pace, pattern, and timing of resource exploitation has yet to be determined". 53

It is precisely because of this buoyant situation that it is advisable to examine the declared public purposes more carefully. For instance, in East Africa reasons for which public purposes have been declared have varied from the purely planning and development notions to the political, economic and social reasons and it is not always that the majority of the people accept or benefit from these objectives.⁵⁴ From the construction of school or hospital buildings, to the establishment of prestigious, multi-storey buildings and hotels, the building of television stations or the removal of "minority" landlords and their replacement with "majority" landlords under the same environment and conditions, the Ministers have been able to confirm compulsory acquisition orders for "public purposes." Yet, in only a few of these can it be said that the general public derived any real benefits.

Under the Tanzanian Land Acquisition Act, 1967, it was a common practice when an owner of undeveloped land which was not subject to development conditions attempted to transfer it, for the Land Officer first to refuse consent and then to acquire it under the Act. The Act itself provided that the President might acquire land for a public purpose which was defined in section 4 to include

"any government scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing or for use by any person or group of persons who in the opinion of the President should be granted such land for agricultural development."

It will be seen that the Act contemplated a situation where the public purpose would arise first and then the need to acquire that land would follow. However, the Land office used the Act as a matter of routine and it was immaterial whether or not any scheme of development existed. A writer has commented that,

"The policy behind the acquisition (was) to prevent the occupier making money out of undeveloped land, a policy quite distinct from that underlying the Land Acquisition Act."⁵⁵

and that the government was rarely challenged on this use of the Act. Members of the public have even preferred to sue the new tenants of the land. The Attorney-General may, and has, refused his fiat to an action against the government, and may also claim privilege if

called as a witness to the action against the new tenants."

East Africa may benefit by inserting into the law of compulsory acquisition provisions which enumerate and describe public purposes for which land may be acquired and then allowing any aggrieved party the right to challenge any order of compulsory acquisition if he believes that the purported public purpose is outside the statutory provisions. On this point it may be useful to compare the Nigerian Law provisions with those under English law and to consider whether these laws have any relevance to the circumstances obtaining in East Africa.⁵⁶ Like Kenya and Uganda post-independence Nigeria possessed constitutional provisions that guaranteed the right to private property and in this respect section 31 of the 1963 constitution of Nigeria is similar to the provisions in both the Kenya and Uganda constitutions which have been examined. Moreover, like Uganda, the post-coup d'etat governments have not shown any intention to abrogate existing legislation or legal concepts relating to private property. Further, like East Africa, the detailed provisions of compulsory acquisition of land are to be found in various land laws which are supplementary and subject to the constitution. Unlike East Africa however the public purposes for which land may be compulsorily acquired are defined within the provisions of this legislation. The major provisions which permit the acquisition of land for public purposes are those contained in the Land Tenure Law. Section 2 of the Act contains a lengthy definition of public purposes as follows:

" 'Public purposes' include

- (a) for exclusive Government or Local Government authority or for general public use;
- (b) for or in connection with measures taken

against sleeping sickness or with sanitary improvements of any kind, including reclamation;

- (c) for or in connection with the laying out of any new, or the improvement of any existing, township, town, village, market, civic centre or Government station,
- (d) for obtaining control over land contiguous to any port or rivers;
- (e) for obtaining control over land required for or in connection with planned rural or urban development or settlement;
- (f) for or in connection with the laying out of an area of land to be reserved for the purpose of trade or industry
- (g) for obtaining control over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government or a local Government authority or local Government authorities;
- (h) for obtaining control over land required for or in connection with purposes of any corporation or board established under the provision of any Act or law for carrying out any functions of a public nature.

Although a number of the definitions, such as those in paragraphs (a) and (h), appear to be too wide to include purposes other than those specifically mentioned, the section has adequately limited the causes for which private land may be compulsorily acquired. Since bureaucrats tend to justify their actions with reference to a given law, it is reasonable to assume that they would be likely to operate within these provisions.⁵⁷ Moreover, even assuming that the acquiring authority decided to use one of the more extensive provisions to acquire land for a purpose which was remote from a benefit to the general public,

a court might decide to apply the ejusdem generis rule to limit the authority's ambition.⁵⁸ However, the important principle is that because Parliament has cared to enumerate and describe the public purposes for which land may be acquired compulsorily, the individual has thereby been given a right to challenge the acquiring authority.

Similarly, in England, local authorities may only purchase land compulsorily with reference to legally pre-determined purposes, the particulars of which are fairly well-known.⁵⁹ A local authority may compulsorily purchase land in its area only if that land is required for development, redevelopment or improvement, or for the relocation of population or industry, or for the replacement of an open space, or when it is expedient to acquire the land immediately in the interest of proper planning of an area. The now defunct Land Commission,⁶⁰ could have exercised similar powers in respect only of the same objects or in relation to land which was situated in an area that had been designated as the site of a new town or in relation to land in a clearance area under the provisions of the Housing Act of 1957.⁶¹ In all these cases, the aggrieved party has access to the courts and may challenge the declared purpose for which the land is purported to be purchased as Lebb v. Minister of Housing and Local Government has clearly illustrated.⁶²

Notwithstanding the diverse land policies currently pursued in the region, it is suggested that East Africa would benefit from adopting similar provisions as those existing in Nigeria or England in respect of public purposes for which land may be compulsorily acquired. As already observed there have been instances when the declared public purpose was questionable on a number of grounds.⁶³ The construction

of television stations and expensive hotels when the areas needed more schools, hospitals and residential housing fall into this category and so is the construction of political party headquarters even when the country concerned still permitted the existence of other parties besides the ruling one. In each of these cases, land has been compulsorily acquired for supposedly public purposes. The proposal to define public purposes remains valid notwithstanding that the acquiring authorities can be trusted not to abuse their powers and in spite of the fact that these questionable purposes may in the end turn out to be for the benefit of the general public. We have commented that public authorities do not have the prerogative of being always right or having the greatest wisdom in planning and development. Consequently, where the public have an opportunity to challenge the declared public purpose there arises a forum for articulating and examining the public purpose and, even if it eventually passes, the undertakers may benefit from the public inquiries and discussions that may precede the implementation. Currently, in the United Kingdom, there is a debate on the concepts and timing as well as the financing of projects like the Naplin airport and the Channel Tunnel. The Government has the power to and at present seems determined to proceed with these projects. On the other hand, there is evidence to show that the Government is beginning to modify its views and to alter the timing for implementation in the light of the criticisms generated at public inquiries by pressure groups. Had the law been that the Government's decision, once made, is unimpeachable, it is improbable that the process of determining the objectives and effect of the two projects would have

pursued with the same caution and breaks. In effect, the suggestion means that to allow challenges to declared public purposes by way of defining the same in statutory law is to encourage public participation in planning and development at the earliest stage. It also means that the acquiring authorities would be given the advantage of examining alternative policies or projects as advocated by those opposed to their schemes, an advantage that would be probably absent in the event of such authorities having the sole right to determine and define public purposes for which land may be compulsorily acquired. The exercise of powers of compulsory acquisition and indeed the whole principle of eminent domain is subject to certain defined rules of procedure and regulations for compensation which are discussed in the next parts of this chapter.⁶⁴

SECTION (c): RULES OF PROCEDURE FOR COMPULSORY ACQUISITION

The statutes which grant the powers of compulsory acquisition will normally prescribe the rules of procedure to be followed when those powers come to be exercised. Failure to observe the rules of procedure may render the purported exercise invalid as being ultra vires the powers of the relevant public authority.⁶⁵ In East Africa, elaborate rules of procedure for the compulsory acquisition of land are to be found in the various land Acquisition Acts and the regulations made thereunder. The Minister's declaration that the land is required for a public purpose must be made by way of statutory instrument. The instrument is to specify the location and the approximate area of the land to be acquired, and if a plan of the land has been made the instrument specifies a place and the time at which the plan may be inspected by anyone interested. A copy of the declaration must be served on the registered proprietor, if any, and on the occupier as well as on the controlling public authority in whose jurisdiction the land is situated. If no plan is existing at the time the Minister makes a declaration, the Minister directs an assessment officer to mark and measure the land affected and to produce a plan thereof. Soon after the declaration, the assessment officer causes a notice to be published in the official Gazette and exhibited at convenient places near or on the land affected. Copies of the notice need to be served on the owners, if any, the occupiers and the controlling authority of the land. The notice must state that the government intends to take possession of the land and that any claims to all interests in the land may be made

to the assessment officer. Further, the notice must give all the particulars of the land and invite all persons having all interest in it to appear personally or by agent before the assessment officer on a day and at a time and place, all of which must be clearly specified in the notice. Unless the Minister directs otherwise, the day on which the interested parties are to be heard must not be earlier or later than a specified period in the Act.⁶⁶ This is to enable the parties to state the nature of their interests, the amount and particulars of their claims to compensation or any objections they may have against the published plan. At the same time the stated period avoids any delays which might be caused in the absence of a fixed period. The assessment officer may require that the information from interested parties be made in writing and signed by them or their agents.⁶⁷

A number of comments may be made on these preliminary rules of procedure. It will be observed that the owners and occupiers of the land affected are not entitled to challenge the reasonableness of the Minister's declaration. This is a matter of policy and the Minister's discretion appears to have finality in effect. The only right they have is to question the accuracy of the plan published with or after the declaration. They are merely asked to declare their interests in the land and to claim compensation ~~therefor~~. The requirement that sufficient notice should be given to parties affected is a fundamental feature in the exercise of powers of compulsory acquisition. Thus, in Donis v. Mutakana (1970)⁶⁸ it was held that failure to serve the registered proprietor of the land affected avoids

the vesting order in the acquiring authority. Moreover, it would seem from the decision in Manyara Estates Ltd v. National Development Credit Agency⁶⁹ that mortgagees are interested parties who should be served with notice. The analysis of case law in East Africa has revealed a dearth of judicial precedents on the question of notice to the parties affected by the exercise of powers of compulsory acquisition. This is perhaps understandable considering that even when a party succeeds in having a declaration invalidated his advantage is only temporary since the Minister is likely to reconsider the matter, follow the correct procedure and come out with the same declaration. The courts have no power to substitute any decision to replace the Minister's declaration. The only effect of challenging it is to delay the vesting of the land into the acquiring authority. It may be said therefore that the requirement for giving notice to the parties is to ensure that they are aware of what is happening to their land or interests in land so as to take steps to protect their remaining interests and to assess and claim compensation for those which are to be alienated.

The provisions with regard to giving notice are neither adequate nor fully practical. The necessity for publishing the notice in the Gazette may have been copied from the English law but it serves little purpose in a region like East Africa. The Government Printer publishes a limited number of Gazette issues which are then supplied almost exclusively to Government departments, local authorities and various public institutions. It is not unusual for one Gazette copy to circulate from office to office and in some cases, from department to department.

The chances of a private individual having access to a copy of the Gazette are minimal. Consequently, it is impossible for all the persons whose land rights and interests are affected by a compulsory acquisition order to obtain the information from the Gazette. It is only when they or their friends work in some government institution which has access to the Gazette that they may be able to read the order. Thus, publication in the Gazette fulfils the legal requirement without giving the necessary information to the interested parties. In any case, both the Gazette and the notices displayed in public and on or near the land to be acquired particularly in Kenya and Uganda tend to be written in the official language which is English.⁷⁰ Few landowners and occupiers are able to read and understand the English language. It follows that little is gained by fixing a notice onto the property or serving it personally on the person whose land is affected when the notice is written in a language he is unable to understand.

Kiapi⁷¹ has proposed that if the government wants to take action which affects private rights and intends to inform the public of its intention, then it should create a special newsletter written in a language which the persons likely to be affected understand. He cites the cases in Kenya and Tanzania where Kiswahili is sometimes used for the dissemination of Government policies and information. There can be no doubt that the use of the vernacular languages in the dissemination of news about Government activities is the most efficient method and it has been effective in the two countries, especially in Tanzania where nearly everyone understands Kiswahili.

However, the system of a newsletter has its own limitations. The fact that it would need to be published in at least half a dozen languages to reach all the areas of the respective countries might prove expensive; moreover, not all the persons to be affected by compulsory acquisition are able to read their own languages. The necessity to publish the newsletter in the different languages would require the employment of a translating bureaucracy which would further denude the already limited resources of the Government in both personnel and finance. It can be stated for instance that the use of interpreters in court and tribunal proceedings in East Africa has proved to be a problem because of lack of these resources.⁷² Two other methods may be proposed. Since in East Africa, local authorities are a little more than mere government agencies, the responsibility of informing residents that their land and interests in land are subject to a government order of compulsory acquisition should be vested in local authorities. To begin with, the officials of a local authority are likely to come from the same area and therefore to understand the local language. In addition, they are familiar with the environment of the area and are likely to know the extent of the land acquired and the residences of the parties affected. The procedure would be as follows: As soon as the Minister has made a declaration of compulsory acquisition, a copy of the declaration should be sent to the relevant official of the local authority in which the land is situated. The official would cause the declaration to be translated in the local language. When accompanied by the area or parish chief he would visit the parties affected and notify them of the Government's decision to acquire their interests in land. He would inform them of the date, time and place when the assessment officer intends to visit their

area and settle their claims. He would point out the particulars of the land and property to which the order applies and inform them of all the particulars which the present law requires to be in the Gazette and the notice served by the assessment officer. This would give the interested parties an opportunity to give the details of their claims and formulate any questions they may wish to put to the assessment officer when he first visits the location. On the appointed day, the assessment officer would be accompanied by the official of the local authority and the chiefs of the area and together these would meet the people interested and proceed to record and adjudicate all the claims made in respect of the land. Thereafter the assessment officer would be able to make his awards to the claimants. The second proposed method is the practice of holding barazas in East Africa - a method which was extensively used during the colonial administration and which has continued in use since independence. A baraza is a formal gathering of all the people within a given area, the holding of which will have been notified to the people of the area by the local chiefs. The inhabitants are informed both verbally and through radio messages that some local or government official will be coming to address them on some policy or decision at a given place, date and time and that afterwards he will explain and discuss with them the government policy or decision. Everyone is urged to attend the baraza. In this context, a baraza has two main advantages: Since it is held locally it is likely to attract many people especially those who may think that they are to be affected by the declaration to compulsorily acquire the land.

There will be no transportation problems as the venue of the meeting is normally chosen within walking distance from most of the residential places in the area. Moreover, the claims and demands of the interested parties are likely to be more articulated considering that they will be arguing in a familiar environment and in the presence of well known local officials and chiefs with whom they have presumably mixed in local social contacts. It is therefore suggested that the holding of barazas in East Africa is a suitable form of supplementing any statutory declarations and notices currently required to be inserted in the Gazette, newspapers or to be placed on or near the property to be acquired.

A point may also be made in respect of the requirement that notice should be served on registered proprietors and occupiers of the premises or alternatively on or near the premises. While it is admitted that in the final analysis personal service is the most effective, a considerable number of the registered owners tend to be chiefs or civil servants who are liable to be transferred from time to time, while many of the occupiers tend to be tenants or sub-tenants of the same property with little stake in the property. Because of this there is no guarantee that these notices will come to the knowledge of all the interested parties. For this reason, it is submitted that the time allowed for claims to be submitted is too short. A period of three months or more might be more realistic. Lastly, it is suggested that the acquiring authority might use the medium of radio as an alternative but not exclusive method of informing the interested parties who are absent from their premises, particularly, of the chiefs and civil service categories. A recent research investigation has shown that

the radio is used more extensively as a means of communication than any other medium in East Africa.⁷³ Further, because they are relatively wealthier, most chiefs and civil servants own one or more types of radio receivers. The suggestion that the radio should not be the only means of communication is made on the understanding that in the event of there being a dispute as to whether or not a party received notification it would be difficult to prove that he had listened to a radio broadcast. On the other hand, the radio would serve a practical purpose in that it would supplement the other means of communication so that whoever was not personally served or summoned to a baraza is given an extra opportunity to get the message from the radio broadcast. It is proposed that to be effective the radio broadcasts of this nature should be made on specific days and times during a given period.

PART II: COMPENSATION FOR THE LAND ACQUIRED

SECTION (a): (i) THE PRINCIPLE OF COMPENSATION

"Land is a free gift from God to all His living things to be used now and in the future. When I use my energy and talent to clear a piece of ground for my use it is clear that I am trying to transform this basic gift from God so that it can satisfy a human need. By clearing that ground I have actually added to its value and have enabled it to be used to satisfy a human need. Whoever then takes this piece of ground must pay me for adding value to it through clearing it by my own labour."

(President Nyerere on "National Property" in "Freedom and Unity" - A selection from Writings and Speeches, 1952-65.)74

It is appropriate that this part should begin with a quotation from the President of Tanzania where there has been the greatest legal concentration of land interests in the state as compared to the other two East African Territories. Most laws including African customary law recognise the principle of compensation in respect of land acquired from an individual or group of individuals where that land has been developed or improved or where the community recognises that the mere fact of owning or holding land creates some special value for which there ought to be some form of compensation. The position of compensation under the common law of England which is generally followed in most Commonwealth countries has been described as follows:

"It is a basic principle of Law that when an owner of land has his interest in the land taken from him under statutory powers he is entitled to compensation as of right unless the statute expressly deprives him of that right. It is still possible for land to be taken by the Crown for defence purposes in an emergency without payment of compensation but, as indicated the prerogative powers of the crown are superseded whenever an Act is passed regulating the exercise of a particular power. In normal times, therefore, compulsory purchase must be authorised by statute and compensation is payable in accordance with the terms of the statute."⁷⁵

Until 1965, the principle of compensation for property requisitioned in England during the time of war was governed by both case law and statute. As far as case law was concerned, the matter had been settled by the House of Lords in the case of Attorney-General v. De Keyser's Royal Hotel, Ltd. (1920).⁷⁶ In that case the War Office, having failed to reach agreement with the owners as to the terms of taking over a hotel, requisitioned it in 1916 for defence purposes and claimed that, although the crown might make an ex gratia payment, it was not, in the case of requisitioning under prerogative powers, bound to pay compensation. The House of Lords decided that the prerogative powers did not apply since the Crown was bound by the terms of the Defence Act, 1842, which allowed owners to claim compensation as of right. With regard to the temporary use of private land or premises for defence purposes, the position was governed by the Land Powers (Defence) Act, 1953,⁷⁷ which enabled the Crown by order, valid for twelve months at a time, to use land occasionally for defence

training and other purposes connected with the defence of the realm but subject in all cases to the payment of compensation. However, in the middle of the 1960s, the House of Lords decided another case, this time, Burnh Oil Co. v. Lord Advocate,⁷⁸ and propounded the same principle of compensation notwithstanding that the property had been affected by a dire necessity of defence purposes. This time Parliament was prompted to intervene by passing the War Damage Act, 1965, which enables British Governments to requisition or destroy property during an emergency of a War without being liable for compensation.

In the United States of America, compensation for property taken for public use is provided for in the fifth amendment to the United States Constitution which is made applicable to the component states by the fourteenth amendment.⁷⁹ Moreover, since in America the Government has less powers over land use than in England, most of the commonwealth and the Soviet Union,⁸⁰ the necessity to pay compensation extends to lands and interests in land which in the latter countries would not probably make the acquiring authority liable for compensation. Compensable property rights include future, present and intangible interests. In the United States v. Causby,⁸¹ the court held that low and frequent overflights of the United States aircraft over the appellants' land were a direct and immediate interference with the use and enjoyment of land and therefore constituted a taking even though the use of the land had not been completely destroyed. Magman has commented that it is only the

courts, both state and federal, which have resisted the temptation to claim for any imaginable right or interest in land by construing damage or loss to the owner as arising only when the Governments' activity causes a depreciation in the market value of the land.⁸²

Although many critics of the Soviet Union form of government suggest that individuals are not allowed to own land or personal rights in land this is not strictly true. For instance the Land Code of the Soviet Union provides,

"All citizens who are desirous of working the land with their own hands, have the right to use the land for the purposes of All citizens wishing to receive land for their own use are allotted land by the community of which they are a member or by the land agencies of the state, if the latter have available land designated for the use of individual persons."

The right to land, assigned to use, is without limit of time and may be terminated only on the basis of grounds established by law."⁸³

Furthermore, where such land is acquired for a public purpose the user is entitled to compensation by way of receiving an alternative plot of land and getting compensation for any improvements he may have carried out on the land. Thus, in City Industrial Council v. Weisstad, the City Industrial Council was allotted a plot of land for the construction of a building of thirty apartment. Included in the plot was a private home owned by Weisstad. The home was to be demolished and

compensation paid. Instead of paying compensation the council allocated a house to the Weishtad family but Weishtad refused to take it. The City Industrial Council brought suit for the eviction of the family and to force them to occupy the space offered. The peoples' court gave judgment for the plaintiff council which was affirmed by the Provincial Court. This decision was reversed by the civil college of the Supreme Court which ordered a retrial. At the subsequent trial the court held that the council had not acted in accordance with the established law and had to

"provide the persons evicted who have been living in the said dwelling for not less than one year, living space suitable for living of dimensions not less than those occupied in the dwelling to be demolished and in accord with the established norms. The property owners, regardless of this, shall receive compensation for the building taken from them." 4

It can be seen therefore that modern legal systems, irrespective of the political or economic system under which they operate, recognise and enforce the principle of compensation in respect of private land or property compulsorily acquired for a public purpose.

African customary law recognised the principle of compensation in respect of land or interests in land where there had been a peaceful taking through negotiation between the parties or where the council of chiefs, elders or the King had agreed that the particular land

was required for a public purpose.⁸⁵ Compensation was not available where the land had been acquired through conquest, or as a punishment to the owner, occupier or user, or where the land had been acquired by prescription through long user and occupation. This may be one of the reasons why constitutional and legal provisions guaranteeing compensation for the compulsory acquisition of private rights and interests in land have continued to be retained since independence while other provisions not founded in traditional concepts have been radically altered or abolished altogether.⁸⁶

(ii) THE LAW GOVERNING COMPENSATION

The Constitutional provisions about land and property have been supplemented by a number of statutes and regulations and many of these have been the subject of judicial interpretation, clarification and explanation when it came to dealing with specific cases of compensation.⁸⁷ While it is true to say that there is little case law dealing with the act or declaration of compulsory acquisition and the procedure thereunder, there are, in East Africa, numerous court decisions on the principle and measure of compensation in the East African Law Reports.⁸⁸ When considering the concept of compensation, the following matters need to be considered, namely, the law applicable, the land or property therein, the acquisition of which leads to a right to compensation, the procedure under which such compensation may be determined, claimed and paid, the grounds on which it is paid and the evaluation of the compensation payable. The law under which compensation is paid in East Africa may be enumerated as follows: customary law, constitutional law, ordinary Acts of Parliament,

statutory regulations and ministerial orders and case law which is based mainly on the received law from England, India and other commonwealth countries.⁸⁹

CUSTOMARY LAW

Professor James⁹⁰ has observed that although there is no legislative basis for the application of the principle of compensation within the domain of customary land tenure nevertheless customary law has come to dominate the case law which has accumulated over recent years in East Africa. This phenomenon can be explained on a number of grounds. Firstly, it has been noted that the colonial towns and urban centres tended to be small in area because their main purpose was to serve the administration and the commercial community the members of which were mainly non-Africans.⁹¹ We have also noted that the peri-urban areas continued to be occupied by the indigenous population under African customary rules of land tenure. It follows that any post-independence extensions of the towns and urban centres have had to be made in areas hitherto governed by traditional rules of land tenure. Consequently, it has been inevitable that the land rights and interests in those extensions should be determined in accordance with local custom and African law.⁹² The acquiring authority having applied modern and largely received law of planning and development to acquire the necessary land has had to deal with

the ancient and traditional concepts in the determination of what the land and the unexpired improvements on it are worth in terms of compensation. The case of Abdalla v. Mohamedi and others (1969),⁹³ though founded on the right of occupancy, is illustrative of this dichotomy. The parties to the suit were members of the Wazaramo Community. However, their dispute was in respect of a right of occupancy over Government Reserved Land which was a creature of modern statute. Notwithstanding the statutory provisions the parties had occupied and cultivated the land in accordance with Wazaramo customary law. The Kadhi's court applying Wazaramo law of land husbandry, found for the defendants. The plaintiff appealed to the officer of the Regional Court who ordered the defendants to pay compensation for the extinction of the plaintiff's rights in the land. The plaintiff appealed to the High Court which held that the land being government land, customary law did not apply and that the parties and their predecessors were all trespassers and could not acquire or transmit any rights in the land. On a further appeal to the Court of Appeal it was finally decided that the rights of the parties as between themselves as occupiers must be governed by the customary law; that the parties were not trespassers but held the land under an implied licence from the Government and; that on the facts the decision of the Kadhi's court was the correct one. In Headman Iwakilasa v. Kasisi s/o Iwakingwe (1946),⁹⁴ it was held that customary law, unlike Roman and Common law, did not recognise the notion of *quic quid plantatur solo credit*. Under

customary law the tenant has the right, on termination of his tenancy or eviction, to remove any permanent fixtures in the land which he put there or, in the alternative, to demand compensation for them from his landlord or successor. In this particular case the defendant, having quarrelled with the plaintiff who was the headman of the area, dismantled the materials of his house and took them with him to a new location where he decided to settle. The headman contended that the custom of the area prohibited the removal of any material used in the construction of a house built on land within their community. It may be observed that there have been a number of instances when concepts of the received English law have been accepted into or confused with notions of customary law and to counteract against this phenomenon it has been a practice in East Africa since the colonial days to verify an alleged local custom pleaded in any case before the courts. This practice is based on statutory provisions. During the colonial days, the then native or African courts, now lower or magistrates courts, were presumed to know the local customs since they were and are still presided over by local personnel. However, where the magistrate did not know or where the parties demanded it he would seek the opinions of the elders within the community. In the case of higher courts which were and are still presided over largely by expatriates or judges who do not necessarily belong to the same community as the parties, the assumption is that they may not know the concepts of local customs.⁹⁵ Consequently, the law allows them to engage assessors from the local community. This is sometimes done by getting several elders or retired chiefs to sit with the

court during the hearing and sometimes by calling an expert witness who has made a special study of the local customs. In some instances, the Government has invited a panel of experts to study the indigenous customs and the panel's subsequent report has made a basis of guidelines on various customs to be used by all courts. In the present case a similar matter had been decided by the Native Court of Appeal which had not found a rule similar to that alleged. Therefore the Court of Appeal rejected the plaintiff's contention and in doing so gave the ground that the plaintiff's interpretation of the custom conflicted with that enunciated by the Native Court of Appeal and held that "the materials such as those under consideration which have been purchased by the owner of the house are his own property and may be dealt with as he pleases." A similar principle was declared in Lukas Kaasha v. Ifumwa Sangwa⁹⁶ and Ibro bin Iwamba v. Attorney-General.⁹⁷ Cases of similar principles have been decided in West Africa as Onolowan v. Olofunda illustrates.⁹⁸ The right to compensation or to remove materials was only available where the improvements had been accepted by the landlord and acceptance might have been by specific agreement, by implication or by acquiescence. In cases where the developer was a trespasser or an illegal tenant the improvements attached to the land as was held in the West African case of Emanuel Ladipo Adeouji v. Ibitoye (1936).⁹⁹ In Ogola N'gala v. Clun Cludhe (1959),¹⁰⁰ an East African case, it was held that,

"In customary law, land given merely for cultivation does not entitle the cultivator to build a house on it unless he has permission. If he does build he could forfeit his right to occupy the land and then even if the house

is expensive and permanent it may nevertheless enure to the owner of the land."

Similarly, where a purchaser buys land under customary tenure knowing that local custom does not permit the sale of land he is not entitled to any compensation for improvements or developments made on that land subsequent to his purchase. This was held to be the law in Jafenia v. Lusaka (1967).¹⁰¹ Secondly, it may be argued that non-Africans in East Africa constituted the commercial-oriented section of the community with the ability and means of transforming land transactions into writing and getting legal representations in negotiations for compensation. Consequently, fewer cases from this community found their way into the courts. On the other hand, most African land transactions tended to be oral and this, coupled with the concept of the 'extended' African family which makes it difficult to determine beforehand who was entitled to compensation resulted in numerous cases of litigation.¹⁰² It is to be appreciated also that legislation in East Africa was relaxed so as to admit land suits the transactions of which had not been in writing or the evidence thereof put into writing. Lastly, many of the decisions about compensation for land, particularly that which had been required for public services such as electricity, water and roads were made by lay magistrates whose speciality was customary law. Invariably, in determining the measure of compensation and the interests for which it was payable the magistrates considered the notions and concepts of customary land tenure. Although magistrates' courts

are not courts of record, whenever their decisions were appealed against in higher courts the latter were bound to consider customary rules on which the lower decisions might have been founded.

CONSTITUTIONAL PROVISIONS:

With regard to constitutional provisions relating to compensation, we may take the **relevant Kenyan provision** which is similar to that of the 1967 constitution of Uganda, namely section 75. This provides *inter alia*,

- "(1)..... (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.
- (2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for -
 - (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and
 - (b) the purpose of obtaining prompt payment of the compensation."103

These provisions are worded and intended to have the effect in the manner that constitutions which incorporate the Bill of Rights do. Tanzania however rejected the incorporation of the Bill of Rights in its Constitution. Consequently, its position with regard to compensation is governed by the ordinary law and property legislation. It may be noted that all the important measures of land legislation in Tanzania since Independence contain detailed provisions dealing with compensation for rights or interests in land acquired compulsorily. These include the Freehold Titles (conversion) and Government Leases Act, the Land Acquisition Act, Land Tenure (Village settlement) Act, Nyarubanja Tenure (Emfranchise-ment) Act, the Rural Farmlands (Acquisition and Regrant) Act, Urban Leaseholds (Acquisition and Regrant) Act, and latterly, the acquisition of buildings legislation.¹⁰⁴ It is true also that both Kenya and Uganda have, since Independence, enacted various Land Laws and that invariably these provide for the compensation for parties whose rights and interests in land have been adversely affected by compulsory acquisition of land. The difference between Tanzania and the other two countries is that whereas in the latter property legislation is supplementary and subject to the provisions of their respective constitutions the Tanzanian property laws are independent of the constitution. This difference pertains mainly to procedure since the substance of the property laws in East Africa tends to be similar especially their provisions dealing with compensation. It is possible in Kenya, as it was in Uganda under the 1967 constitution, to challenge any land or property legislation as being

inconsistent with the provisions of the constitution and the challenge may require to be heard by a full bench of the High Court as happened in the case of Shah v. Attorney-General of Uganda. Moreover, the provisions guaranteeing private rights to property in the constitution may not be altered or abolished except by a special procedure in Parliament.¹⁰⁵ In Tanzania, property or land law may be altered or abolished under the ordinary procedure of Parliament and cannot be questioned in a court of law as being inconsistent with the Constitution.¹⁰⁶

ORDINARY LAND LEGISLATION:

Whenever an East African Government decides that some land needs to be compulsorily acquired for the purpose of implementing some national land or economic policy it causes legislation to be enacted and almost always such measure will make provision for the compensation of the persons whose rights or interests in the land are to be affected. In many cases the provision will refer to and apply the more detailed rules and regulations contained in or made under the general Act, namely, the Land Acquisition Act, or will be modelled on the provisions of that Act.¹⁰⁷ It is therefore proposed to examine the various provisions of Land Acquisition legislation in so far as they relate to compensation. In most cases the Acts will authorise the relevant minister to make regulations under which compensation may be determined and paid. This amounts to a distinct departure from the Received Law and the practice in England from where East Africa has derived most of its planning laws and precedents.¹⁰⁸ Under the Received Law, in this case, the Land Acquisition Act

of 1894 of India, compensation was regarded to be of such importance as not to be left to the discretion of a Minister. Matters such as the procedure to be followed in determining compensation, notices to be served on interested parties, applications and appeals to and costs in courts, the measure of the compensation and the manner in which it was payable were each to be found provided for in the general body of the Act. In England, the question of compensation has always been of such great importance that it is often covered in separate Acts from those dealing with and granting the powers of compulsory purchase. Admittedly, Part II of the Town and Country planning Act 1944 as followed by Part V of the Act of 1947 and Part III of the Act of 1954 specifically dealt with the provisions about compensation but these were only supplementary to the Acquisition of Land (Assessment of Compensation) Act, 1919. In any event, to-day most of these parts and the Act have been repealed but their joint effect re-enacted in the Land Compensation Act of 1961 which operates beside the current Town and Country planning Act of 1971.¹⁰⁹ However, this does not mean that in England the minister has not got wide powers to make statutory instruments in respect of planning and compensation. His powers are limited to the operation of the Acts and he has often issued orders and directions and this is envisaged under the legislation since he is vested "with the duty of securing consistency and continuity in the framing and execution of national policy with respect to the use and execution of national policy with respect to the use and development of land throughout England and Wales."¹¹⁰ He is thus an instrument of implementation and co-ordination rather than a legislator determining

the rights and interests of owners and occupiers of the land. In East Africa the planning and land laws have preferred to invest him with legislative powers.

Typical of the East African planning law is the Land Acquisition Act, 1965 of Uganda which provides that,

"The minister may, by statutory instrument, make Regulations for the assessment of compensation under this Act and generally for giving full effect of the provisions and purposes of this Act."¹¹¹

We have seen that as soon as the Minister decides that a piece of land should be the subject of compulsory acquisition, he is obliged to publish a declaration to that effect. From the date of the declaration interested parties have fifteen days within which to disclose their rights and interests and, the particulars thereof, to the assessment officer. On the appointed day the said officer shall proceed to hold an inquiry into the claims and any objections made in respect of the land. He then makes an award under his hand specifying the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the compensation among the persons known or believed by him to have an interest in the land, whether or not they have appeared before him. For the purposes of the inquiry, the assessment officer has the same powers as a court of law. He can summon and compel the attendance of witnesses and order the production of relevant documents. A copy of the award must be served on the relevant Minister and all the interested parties. Thereafter the Government is obliged to pay compensation in accordance with the terms of the award as soon as may be after the expiry of the time within which an appeal may be lodged. Notwithstanding that an appeal has been lodged,

the Attorney-General may make an application to the High Court which may order that payment be made into court on such conditions as the High Court deems appropriate. Under section 6 of the Act, the assessment officer takes possession of the land as soon as he has made his award but he may do so immediately after the publication of the declaration if the Minister certifies that it is in the public interest for him to do so. There is no provision for challenging the Minister's certificate. The taking of possession by the assessment officer has two legal consequences. The acquired land vests in the Land Commission or the Controlling Authority by operation of law and any private estate or interest in the land is converted into a claim of compensation under the Act. Procedure exists under which the acquired land may be registered. The assessment officer forwards the declaration, endorsed with a certificate that he has taken possession, to the Registrar of Titles.¹¹² The latter must register the title notwithstanding any inconsistency with the Registration of Titles Act. Section 8 of the Act deals with a declaration relating to the acquisition of houses, buildings and manufactories. Where only part of such buildings have been compulsorily acquired, the proprietor or occupier may request the Minister to extend the declaration to the whole building and the Minister then is obliged to do so. Alternatively, under section 11, if the Minister is of the opinion that a claim for compensation in respect of any land acquired by severance is unreasonable or excessive, he may extend the declaration to the remainder notwithstanding that it is not required for the declared purpose. Any dispute as to whether or not any land forms part of a house, or building or manufactory to be acquired or whether any compensation should be paid for land acquired for temporary occupation

under section 9 shall be determined by a magistrate's court on a reference to it by the Attorney-General. On the other hand, when there is a dispute involving the total amount of compensation or the failure or refusal of the assessment officer to include any person in the apportionment of the compensation or the actual amount allowed in the apportionment, the aggrieved party may appeal to the High Court as of right.

These same principles and rules are to be found in the relevant laws of Kenya and Tanzania subject to a number of variations and modifications.¹¹³ In Tanzania, when the Minister decides that a piece of land is required for a public purpose and therefore should be compulsorily acquired he is obliged to give notice to the person or persons interested. The notice which must be of a period not less than six weeks requires the addressee to yield possession of the land or interests therein to the Minister. The expiration of the notice vests the land in the President and thereafter the Minister or his authorised agent is entitled to enter upon the land. In Kenya, the assessment officer is called the collector - a term that survives the Indian Land Acquisition Act, 1894. The collector is required to give public notice of the Government's intention to acquire the land and to call for claims for compensation. He then determines and makes his award and takes possession of the land. From this stage the land vests in the Government and is free from incumbrances. Any interested party who declines to accept the award can require the collector to refer the matter to the court.¹¹⁴

STATUTORY REGULATIONS AND MINISTERIAL DIRECTIONS:

The manner in which planning and development has been described

has implied that the subject is not constant at all times. Many factors and situations are so buoyant that Parliament cannot be reasonably expected to provide a statute that would adequately cover every eventuality likely to beset any plan or affect land prices, speculations or market trends which determine the value of compensation. Moreover, Parliament has neither the time nor the expert knowledge to pre-determine and prescribe every detail and rule involved in considering all the aspects of compensation. Consequently, Parliament has delegated legislative powers to the Minister and his agencies to make statutory regulations and to give directions in respect of these eventualities and details. In fact these powers are not limited to the Minister alone. For instance, under the Land Acquisition Act, the Chief Justice is empowered to make rules and regulations under which compensation references or appeals are heard in the High Court. In the absence of such rules and regulations the matter is to be determined in accordance with the Civil Procedure Code and the rules made thereunder.¹¹⁵

The rules and regulations made by the Minister or other public agencies have the force of law. They only differ from Acts of Parliament in the sense that they are impeachable in Courts of laws on grounds such as ultra vires, bias, unreasonableness or contrary to natural justice.¹¹⁶ Cases like Koinange Mbiu v. R., (1951),¹¹⁷ Patel v. R., (1961)^{117a} and Municipal Board of Mombasa v. Kala, (1955)¹¹⁸ are examples of these principles. Be that as it may, a considerable number of statutory instruments and ministerial directions exist by which the question of compensation may be determined. In England, for example, it has been said that "circulars are sent from time to time to local planning authorities on various aspects of planning control; these circulars are usually available to the public as well, so they

are often of considerable assistance to land owners and their professional advisers in negotiations with local planning authority and in conducting appeals to the Minister."¹¹⁹ Thus, many decisions on planning issues, including compensation may depend not so much on the statute itself but on the implementation regulations or directions given by the Minister or his authorised agents. For example, under English law, it is not enough to confine one's examination to the provisions of the Town and County Planning Acts or the Compensation Legislation if one wishes to know the exact law about the subject of compensation. It is also necessary to study the General Regulations and special directions given under those laws. It is these regulations which prescribe and give the details of the requirement for the Minister to give notice of his intentions to any person having an interest in the land or who is likely to be affected by the reduction of unexpended balance. They also specify the grounds upon which such a person may object and the further steps he may take to claim remedies. Often there will be volumes of statutory regulations, rules, orders and directions supplementing bound volumes of statutory law.¹²⁰ The Acquisition of Land Acts in East Africa must be read and examined together with the regulations, rules, orders and directions.¹²¹

CASE LAW:

The types of law which have been enumerated are incapable of mathematical precision. They are formulated in the human language which is by nature capable of different interpretation and meaning.

The words 'fair', 'adequate' and "prompt compensation" as well as the 'grounds' on which it may be paid are likely to mean different things to different people at different times depending on the surrounding circumstances and the economic, social as well as the political conditions obtaining at the time the matter comes to be decided.¹²²

The courts have often interpreted the various laws and produced coherent and consistent meanings at given times. The functions of the judiciary include the discovery and application of laws to the given facts of a particular case and the determination of the legality of various kinds of action and behaviour in society and the fixing of remedial or compensatory measures in given situations.¹²³ In the application of the law, the East African courts consider themselves bound by statutory provisions except where these are vague or inconsistent with one another or with the constitution in which event the meaning and validity of the law must first be declared. Occasionally, a court may be faced with a problem on which there is no express law. It may then find itself persuaded to apply such analogies and principles as may be discovered from other legal systems, rules of natural justice, equity and the circumstances of the particular problem. Once the court makes a decision the decision will contain certain elements of precedent which will guide or influence actions and behaviour in similar future situations. The precedent is for the benefit not only of other courts but also of other people including the Government, local authorities and institutions concerned with a similar subject under the same conditions. Sawyerr has given general and critical appraisal of case law in East Africa and the extent to which courts there have applied and interpreted both the received and local laws to suit conditions and circumstances prevailing in the region.¹²⁴ A considerable number of

these cases relate to land law generally and to compensation provisions in particular. Consequently, a thorough understanding of the concept of compensation would, in addition to the laws already discussed, involve the analysis of cases as for example Collector v. Kassam Shivji and others,¹²⁵ Adonia v. Mutakanga and Manyara Estates Ltd.¹²⁶ and Kijaga Ngaa v. Mjengi Alute.¹²⁷ Moreover, in determining the disputes relating to compensation, courts will normally be guided by judicial precedents existing on similar topics. For instance, in Abdulla and others v. The Collector for the City Council of Nairobi and Coronation Hotel v. The Collector for the City Council of Nairobi,¹²⁸ two cases decided together by the Court of Appeal, four cases were cited to support the arguments of both sides, but in Nairobi City Council v. Ata - Ul Haq no less than twenty two cases were cited.^{128a}

SECTION (b): . GROUNDS ON WHICH COMPENSATION IS PAYABLE

The basis of compensation in East Africa is the received planning legislation and precedents of English and Indian Law as applied and modified by local Acts and interpreted by the planners, administrators and the courts. Whether compensation is payable and what amount is payable will generally depend on the nature of the land affected, the loss or damage suffered by the owners, occupiers or users and the expenditure incurred by the same people either in moving to new locations or finding alternative accommodation. There is one important distinction between the English law and that operating in East Africa. In the United Kingdom a great deal of land development is carried out by private owners, developers and undertakers. Consequently, compensation there is payable in respect of two distinct sets of planning decisions or schemes. It is payable where the owner or developer has applied for planning permission to develop the land but permission is refused, revoked or modified so as to affect his development prospects. Thus, under sections 146, 169 and 170 and schedule 8 of the Town and County Planning Act of 1971 an owner of the fee simple or a tenant for a term of years absolute who has been adversely affected by a planning decision or scheme is entitled to claim compensation if he can show, inter alia, that the value of his interest in respect of which he is making the claim is less than what it would have been if the planning decision or scheme had not been made.¹²⁹ The second set of planning decisions or schemes in respect of which compensation is payable is where land is compulsorily purchased for a public purpose. Moreover, where in England, application for

planning permission is refused or given under certain conditions the owner may decide to serve a purchase notice on the local authority to buy his interest in the land if he can show that the land has become incapable of reasonably beneficial use in its existing state or that in any case cannot be rendered capable of reasonably beneficial use by the carrying out of any other development. For this reason it is important under the English law to ascertain what amounts to development and whether such development entitles the aggrieved party to claim compensation.¹³⁰ Thus, section 22 of the Act defines development as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land". Telling¹³¹ has observed that the whole system of planning control in England depends on the definition of development. The essence of 'operations' was explained by Lord Parker, C.J. in Cheshire C.C. v. Woodward (1962),¹³² and the notion of 'use' was partly elaborated in Sunbury-on-Thames U.D.C. v. Mann (1958)¹³³

In East Africa much of the law concerning compensation is limited to compulsory acquisition cases notwithstanding that in a number of instances the development is carried out by landowners, occupiers and private developers. The general rules governing the payment of compensation for the compulsory acquisition of land in East Africa have been noted in the examination of the constitutional provisions and the relevant land Acts. It has also been noted that these are supplemented by statutory instruments and ministerial orders or directions. Since this is an important aspect of the whole machinery it is necessary to reproduce in full one of these instruments as applied to Uganda. The

subsidiary legislation of the Laws of Uganda, 1965 provides as follows:

"116. The following rules shall be observed in determining the amount of compensation to be awarded in respect of any land or building acquired, or otherwise dealt with under this Law,

- (a) Regard shall be had to any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land, or from the acquisition or alteration of the building;
- (b) When any addition to, or improvement of, the land or building has been made after the date of the publication of any notification under this law notifying that it is intended to acquire or otherwise deal with the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repair or unless it was carried out under special written authority of the local authority) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid in respect of the land or building;
- (c) the estimate of the value of the land or building shall be based on the fair market value as estimated at the date of the publication of any such notification and of several interests in such land or building, due regard being had to the nature and the condition of the property and the probable duration of the building in its existing state and to the state of repair thereof, and without any additional allowance in respect of the compulsory nature of the acquisition;
- (d) the amount rent of any building or of any land assessed as a building site shall not be deemed to be greater than its assessed annual value:

Provided that where any addition or improvement has been made after the date of the publication of any notification notifying that it is intended to acquire or otherwise deal with the land or building under this Law, regard may be had to any increase in the letting value of the land or building due to such addition or improvement;

- (e) if the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being so overcrowded as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only, or were occupied by such a number of persons only as it was suitable to accommodate without risk of such overcrowding;
- (f) if the building is in a state of defective sanitation or is not in reasonably good repair, the amount of compensation shall not exceed the estimated value of the building after it had been put into a sanitary condition or into a reasonably good repair, less the estimate of the expense of putting it into such condition of repair;
- (g) if the building being a building used for intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials less the cost of demolition;
- (h) where only part of a building is acquired or otherwise dealt with, the preceding rules shall apply with such modification as may be necessary."¹³⁴

These detailed rules may be contrasted with the generality of the Parent Act which simply provides that in determining the amount of compensation, the assessment officer or the court, as the case may be, shall be guided by the following factors, namely, the market value, the damage sustained by reason of taking any standing crops or trees or the land, damage or loss sustained to the remaining property, change of residence or place of business by the person affected, any expenses incurred by reason of the acquisition and any bona fide damage resulting from the diminution of the profits of the land between the time of the publication of the declaration and the time of taking possession. In Kenya, the rules of

compensation for the compulsory acquisition of land may be found in the Land Control Act of 1968 and in the regulations made thereunder or referred thereto and in Tanzania the equivalent legislation is the Land Acquisition Act of 1967.

Although the respective East African planning laws provide for the granting of planning permission for private development the refusal to grant such permission does not, as in the United Kingdom, carry a right to compensation. This is the case notwithstanding that the application concerned was in respect of a zone in which such development is authorised or that the applicant can show that he may have suffered loss by reason of the refusal.¹³⁵ Under the English Town and County Planning Acts, an applicant who is refused planning permission or who obtains it subject to conditions, is entitled, in specified cases, to claim compensation. All he needs to show is one of two things, namely, that the refusal or conditions have made the land incapable of reasonably beneficial development in its existing state or that even if planning permission were to be granted for some other use it would still be incapable of reasonably beneficial development.^{135a} Moreover, in cases where compensation is inappropriate, the unsuccessful applicant may serve a purchase notice on the local authority to buy his interest in the land where that interest is a fee simple or a term of years absolute. Thus, in respect of private development, the East African laws are intended to control private development of land through the principle of consent without recognising that a refusal or a grant of permission upon conditions may be injurious to the interests of the applicant justifying compensation. It follows that the examination and analysis of the East African planning law as it relates to compensation is currently confined

to the compulsory acquisition of land.

THE JUDICIAL INTERPRETATION OF THE GROUNDS FOR COMPENSATION:

In the majority of cases the interested parties will accept the compensation offered and subject to any contrary evidence, it may be assumed that in assessing the value of and accepting the compensation, the parties are usually in agreement as to the grounds set out in the statutes and various regulations. However, there have been occasions when the interested parties accepted the compensation reluctantly without agreeing that the assessment officer or the collector has considered all the grounds likely to enhance the value of the compensation payable. For example, in the Uganda National Assembly debate of 1965 the following exchange of words between opposition members and the minister concerned took place and suggested unfair assessment of compensation with regard to the implementation of the Electricity Act,¹³⁶

"Mr. Ocheng: Is the Minister aware of the fact that the Uganda Electricity Board officials cut crops where power lines are being erected before assessment and payment of compensation to the individuals concerned?

Further, is the Minister aware of the fact that the rate that Uganda Electricity Board pays for coffee trees is lower than that paid by Government?

The Minister of Industry and Communications:

The cutting down of trees by the UEB invariably takes place before the value of crops is assessed and before compensation is paid because, before erection operations for power lines, it is not

known what trees will be cut down, or actually damaged in the course of the power lines installation. But after cutting crops, the Board's trained assessors, together with the individuals concerned accompanied by a representative of the gombolola chief, follow up the damage caused and assess it..... It is not true to say that the rate at which the UEB pays for coffee trees is lower than that paid by Government.....

Mr. Musitwa: Mr. Speaker, will the Minister agree that the rates at which the damaged crops are paid for are kept confidential....why...?

Minister:would the member clarify.....?

Mr. Musitwa: Is the Minister aware that if somebody complains too much that he is underpaid for his crops, his name is kept separate until the other people have been paid first and the one who complains is paid afterwards at a different rate?

Minister: The rate varies according to the age and quality of the trees in question.....

Mr. Ocheng: Mr. Speaker, in view of the fact that the Minister has stated that different prices are paid for different age groups of trees, would the Minister not agree that it is wrong therefore for the Electricity Board to cut down trees and then assess the price when the trees have already been cut down?

Minister: According to present practice it is possible, in my opinion, to assess the age and quality of the trees shortly after they have been cut down.

Mr. Lunaba: Mr. Speaker, in view of the fact that most of the people who are affected by the cutting down of these trees complain a lot, would the Minister now take steps to see that no more trees are cut unless assessment is done beforehand?

Minister: Mr. Speaker, I have been actually reviewing this question in view of the number of complaints that have reached me concerning the compensation

for the trees cut down and we are endeavouring to reduce the time lag between the actual cutting down and the assessment.

The extract from the debate of the then National Assembly has been included here to show that in spite of the law applicable and the grounds prescribed, compensation has not always complied with the norms established. It is apparent from the debate that the only compensation recognised under the Electricity Board's regulations is for the crops standing on the acquired land, but even then the amount payable is unrealistic. Owing to the scarcity of private land valuers, the property is usually assessed by government land valuers. These are drawn from the department which is directly concerned with the promotion of the proposed plan or scheme and thus violating the principle of *nemo judex in causa sua*.¹³⁷ Admittedly, the principle is not strictly adhered to in other countries. For instance, in England, it may be modified by statute and such modifications have been judicially accepted in cases like Reg. v. Registrar of Building Societies (1960),¹³⁸ Local Government v. Arlidge (1915),¹³⁹ and Wilkinson v. Barking Corporation (1948).¹⁴⁰ Nevertheless, English law insists that the dispensation with the rule would only be valid if the parties were given an opportunity to be heard and represented and if it was obvious that there was no question of real likelihood that the proceedings would be heavily weighed against the aggrieved party.¹⁴¹ The East African courts have often attempted to follow English judicial authorities but as Sikabuza v. The Director of Lands and Surveys (1960)¹⁴² illustrates, these courts have not always emphasized the two guarantees mentioned in the English cases in spite of the fact that most East Africans who are affected by the exercise of compulsory powers of acquisition may not appreciate the saleable

and economic values of their land.

The above altercation in the National Assembly illustrates one of the methods by which the basis of fair compensation is clarified, namely, Parliamentary control of administrative action.¹⁴³ On occasions the interested party is so dissatisfied with the compensation offered that he initiates court proceedings. It is therefore necessary to examine the role of the courts in the determination of compensation for the compulsory acquisition of land. The general principle followed by the courts can be said to be that interested parties are entitled to fair compensation as determined in accordance with the grounds prescribed by law and the justice and circumstances of the particular case. Variation in judicial approach to the question of compensation may depend on whether the interested party is an owner, industrialist, a tenant, resident or adverse possessor and on whether the law applicable is determined by customary law, statute or agreement between the parties. A number of cases will illustrate these factors.

In Melishoni bin Mzimbi v. Mzee bin Ronbo (1946)¹⁴⁴ the customary rules under which the parties were governed provided that the measure of compensation for land acquired was a cow and a calf. The lower courts accepted this value and decided accordingly. On appeal, the Board was of the view that

"There are other considerations which lead to a different conclusion from that reached It is manifestly inequitable that land valued so many years ago at the price of one cow and one calf should be capable of redemption today at that price without account being taken of its present value and the improvements now existing upon it as the result of the labour performed and expenditure incurred by the occupiers during that long period of uninterrupted occupation."

The Board affirmed the orders of the lower courts on condition that the redemption price included the ascertained value of those improvements. In so doing the Board was introducing the principle of fair compensation not according to the customary rules but because the justice of the particular case demanded it. A contrast may be made between this case and two others, namely, Kiyanga Ngaa v. Muengi Alute (1948)¹⁴⁵ and Rwanda Coffee Estates Ltd. v. Singh (1966).¹⁴⁶ In the former case, the occupier had been an adverse possessor "for a long period of time" under Nyaturu customary law. When ejected from the land he filed a claim for compensation. On appeal, the Court of the Provincial Commissioner instructed a panel of experts to consider whether the local custom permitted an adverse possessor of land to claim compensation from the true owner for any improvements made during the adverse possession, such as building houses, planting permanent crops or developing the land in other ways. The experts were of the opinion that no compensation was payable. In the Rwanda Coffee Estates case the claimant was an heir to a licensee who had expended the sum of 27,000 shillings in constructing a house and a shop on the land of the vendor. Later the vendor sold the land and the buildings to the plaintiff. Meanwhile the claimant was in occupation of the land having taken it over on the death of his brother, the licensee. The plaintiff sued the heir for possession and mesne profits and the latter claimed compensation for the improvements effected by his brother. The Court of Appeal held that the licence was personal to his brother and that the claimant was in unlawful occupation of the land, but was still entitled to be compensated for the improvements. The two decisions may also be contrasted with a situation where the "adverse possessor" buys the land from someone who has no title to pass. There is authority for saying that in such a case the "adverse

possessor" is entitled to compensation for the improvements he has personally carried out. Thus, in Christopher s/o Kashwa v. Kagaruki s/o Mashebe (1951)¹⁴⁷ the plaintiff claimed possession of his land which the defendant had purportedly bought from the plaintiff's tenant. On proof of the purchase, the court made an order of possession in favour to the plaintiff on condition that the plaintiff refunded to the defendant the value of the unexhausted improvements in the land at the date of repossession. It is questionable whether a similar decision would apply to a case where the purported seller was a mere adverse possessor and not a tenant with an apparent right of occupation which might have led the purchaser to believe that the 'vendor' had a right of title to sell. The system of search by which a prospective buyer may discover any incumbrances on the land is not fully developed under customary law and this may be the reason why courts are willing to assist the unsuspecting purchaser of customary land.

The right to compensation must be in respect of improvements effected in pursuance of legitimate occupational rights. In other words, the court will only make an order for compensation if the improvements were in accordance with the type of land. Compensation for crops must be related to the land which was granted for cultivation just as compensation for a building must be in respect of land occupied for the purposes of building. Alternatively, the improvements must fall within the terms specified in the grant or in the traditional user. In Ogola N'gala v. Olum Oludhe (1959)¹⁴⁸ the court held that

"In Lwo customary Law, land given merely for cultivation does not entitle the cultivator to build on it unless he has permission. If he does build he would forfeit his right to occupy the land and then even if the house is expensive and permanent it may nevertheless enure to the

owner of the land."

Similarly, in Ringita Nyogaro v. Omari (1965)¹⁴⁹ where the defendant planted banana trees, sugar cane and other fruit trees contrary to the terms of the tenancy the High Court held that the defendant was not entitled to compensation for these improvements. Reading the judgment of the court Kimocho J, said,

"The trial court was satisfied that the Shamba belonged to Ringita (the plaintiff) and that he had allowed Omari to cultivate it on condition that he did not plant permanent plants. This is to say that although Omari entered the land lawfully he became a trespasser the moment he planted the permanent plants in defiance of Ringita's conditions. He cannot therefore be allowed by the courts to benefit from his illegal act."

In Hussein Sembua v. Alli Yeterri (1962)¹⁵⁰ the Native Authority allotted part of communal land to the plaintiff. Previously the defendant had had a right of cultivation in the land which he had habitually exercised for a long time. The defendant had not been present when the land was allocated nor was he informed of the allotment on his return. Therefore he began cultivating bananas in the area of dispute. The plaintiff brought an action against him for eviction and alleged that the defendant had ignored his pleas to stop cultivating in view of the allotment. The court of first instance found for the plaintiff as far as the ownership of the land was concerned but ordered him to pay the defendant the sum of 635 shillings by way of compensation in respect of the latter's improvements. This figure was assessed at half the usual rate on the grounds that it was equitable since it was not the fault of the plaintiff that the improvements had been carried out. There were two

further appeals to lower courts at which the consideration and decisions were based on whether or not the disputed area was in the allotted land. Being dissatisfied with these decisions both parties appealed to the High Court where the judge was assisted by assessors. The assessors were of the opinion that while the plaintiff should get the ownership of the land the defendant should be entitled to full compensation. The judge disagreed with the second recommendation and held that the defendant was not entitled to compensation for any improvements made after he had been notified of the allocation to the plaintiff. In Mbwana v. Alli Jingo (1965)¹⁵¹ it was held that a mortgagee is not permitted to plant additional trees on the land. Consequently, a mortgagee who takes possession of the mortgaged land and spends money in carrying out additional improvements does so at his own risk since on redemption he may not be able to assume that he would recover any expenses incurred on repair or the maintenance of husbandry of the land.

There has been occasions when the law applicable itself has been in doubt. In Collector v. Heptulla and others (1968)¹⁵² the City of Nairobi decided to purchase compulsorily certain land owned by the respondents for a highway improvement scheme. Under the Indian Land Acquisition Act a Collector was duly appointed to assess the value of the land. The Collector decided, as a matter of law, that part of the land, which had been shown as intended for roads on an approved subdivisional plan, was of no value, and on this basis assessed the value of the land. He also, in case he was wrong in his decision on the law, made an alternative assessment. At the request of the respondents, the Collector referred the case to the High Court, where the judge decided that the Collector was wrong on

the law and that the plan should be ignored; and on further evidence from experts, the judge increased the value of the compensation. The Collector appealed to the Court of Appeal, and the only issue on the appeal was the matter of law. The respondents cross-appealed, challenging the judge valuation on the facts as being too low. On the appeal the Court of Appeal held that it was quite unrealistic to ignore the existence of the approved plan and the compensation should be reduced. On the cross-appeal, the court held that the judge had misdirected himself about the evidence of the valuers and that had he not done so he could not possibly have set a higher value on the land.

New Munyu Sisal Estates Limited v. Attorney-General of Kenya
(1969)¹⁵³ raised two important questions concerning the interpretation of section 75 of the Constitution and the "law applicable" in respect of land acquired compulsorily. The relevant provision of the constitution was section 75 (1) (c) which states that before property can be compulsorily acquired

"provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

The two questions to be considered by the court were

- (a) what is the remedy of the owner of property that has been compulsorily acquired assuming that there is a 'law applicable' but the law has not been applied?
- (b) what is the remedy of that owner where there is no law applicable?

It was common ground between the parties that the Government had in 1967 acquired the land and certain properties on it for which the Kenya law provided compensation. Unfortunately, neither party had specifically mentioned the law applicable in the pleadings. The plaintiff claimed the market value of the land and property plus fifteen per cent. By implication, the pleadings brought the action within the provisions of the Land Acquisition Act, 1894, of India, which used the same terminology and was applicable to Kenya at the time of acquisition. On the other hand, at the time the case came to court, the Kenya Parliament had already enacted the Land Acquisition Act of 1968 which came into operation in the August of the year.¹⁵⁴ Neither side argued or conceded that either of the Acts was the applicable law. To complicate matters further, the Government had purportedly acquired possession of the land under a management order in accordance with section 187 of the Agriculture Act but this section was not applicable to this particular land and the plaintiff had argued, quite rightly, that the order was invalid. The Government could have proceeded under section 188 of the same Act which provides that whatever land acquired thereunder "shall be acquired under the Land Acquisition Act, 1894 of India", but they had not done so. In the end, the learned judge decided to determine "the law applicable" by the following reasoning:

"In short there is no law to which my attention has been drawn and under which one can say with certainty the Government acted in acquiring this farm. The plaint itself mentions the Agriculture Act as the law under which the Minister of Agriculture purported to act in the first instance.....

There is no evidence that the procedure laid down in the Acquisition Acts was complied with. I think I can in these circumstances, apply the law which must nearly cover the facts. Such law is the Indian Land Acquisition Act, either because it was the 'law' within the meaning of S.75 (1) (c) of the constitution at the relevant date or because the 'Law' was the Agriculture Act, which in turn, brought in the Indian Land Acquisition Act. The fact that non-compliance with the procedural provisions of an Act should not, in my view, be used to the detriment of the subject. Compensation calculated in accordance with the Indian Land Acquisition Act, 1894, is therefore due to the Plaintiff."

This case is interesting for two reasons, The plaintiff does not seem to have challenged the order of compulsory acquisition. He was merely concerned with the amount of compensation he was to obtain. Had he challenged the order it is unlikely that the judge would have upheld it on the ground that non-compliance with the procedural provisions of an Act should not, in his view, be used to the detriment of the acquiring authority. Further, it could have happened that the measure of compensation as provided by the Indian Act or the Agricultural Act might very well have been different from that under the Land Acquisition Act of 1968 in which event the "law applicable" would have been of great importance. In this particular instance, it happened that both the Indian and the latter Kenya Acts provided for the same measure of compensation. Be that as it may, the case illustrates two important roles of lawyers. In the first place, drafting counsel needs to take care that the laws he drafts do not conflict with one another or contain vague and imprecise provisions. In the second place, litigating counsel should make sure that his pleadings are related to and do

describe the law applicable. From another aspect the case illustrates the power of the High Court to administer justice even when confronted with as difficult a decision as this one. Commenting on the judgment Kenneth Potter said,

"The case affords a valueable example of the importance of the widely framed enforcement provisions of the constitution which are intended to secure that the High Court is not thwarted in its duty to enforce the fundamental rights and freedoms contained in Chapter 5 of the constitution..... The High Court has original jurisdiction to hear and determine the application and power to 'make such orders, issue such writs and give directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of, inter alia, section 75'."155

SECTION (c): THE VALUE OF COMPENSATION

In examining the concept of compulsory acquisition of land it is not sufficient merely to know that compensation is payable. It is also necessary to understand and appreciate the nature and value of such compensation.¹⁵⁶ The need to do so is based on two main grounds, namely the desire on the part of the interested parties to obtain the greatest value possible for their land and, the need on the part of the acquiring body or person to pay such compensation as will not bring about a substantial reduction in the amount required for the implementation and completion of the planning and development schemes and projects of the area which may or may not have been determined in contemplation of the compulsory acquisition. It is important that as soon as the acquiring authority has expressed the need to acquire land for a public purpose the procedure for doing so should be followed expeditiously. This is likely to be the case where the interested parties are offered fair compensation; otherwise the negotiations between the parties are likely to be protracted and to prove difficult as well as to lead to a considerable delay. This would not be conducive to effective planning and development implementation. At the same time, it might be unrealistic for the acquiring authority to offer compensation so generously as to jeopardise the implementation measures stated before or subsequent to the acquisition. This may be illustrated by a hypothetical example. A department plans to build residential units for its employees. It calculates that it needs to build ten units at a cost of 200,000

shillings, that is, 20,000 shillings is required for the construction of one unit. The Government grants the 200,000 shillings to the department for this purpose. The department discovers that it needs to acquire land compulsorily and then earmark it for the construction of the said units. The interested parties demand 60,000 shillings in compensation. This would mean that in the current year the department could only afford to build seven units instead of the original ten or otherwise would have to wait for the next annual budget when it would request the Government for the extra 60,000 shillings required, thereby causing a further delay in implementation. Nor would it be certain that such sum would be available, considering that priorities in Government financial spending are liable to change from year to year. Two other alternative courses may be open to the department. It may continue negotiating with the interested parties in the hope that they will be persuaded to accept a lower figure of compensation. However, the problem of delay remains and in any event whatever sum is eventually agreed will still cause a shortage in the original estimate. The department may press that instead of compensation in money, the interested parties should receive land in exchange for that acquired. Although this approach has the advantage of ensuring that less money is spent on the acquisition there is no guarantee that it would be welcomed by all the interested parties and, in any case, it might require the formulation of new policy by the Government which would in turn cause further delays.

Several examples are available to indicate the amount of money required for compensation. Recently, the Ministry of Internal Affairs of Uganda acquired private land compulsorily for the extension of its

prison services at Luzira.¹⁵⁷ It had to pay the sum of 354,597.95 shillings in compensating landowners and their tenants. The land had been officially valued at 5000 shilling per acre but the Ministry had to pay compensation in the range of 15,000 to 10,000 shillings per acre to the landowners. Payment to the tenants ranged from 5000 shillings to 23 shillings per tenant. The Ministry of Education has also paid some 136,180 shillings as compensation to tenants of public land adjacent to Kyambogo for the land required for the extension of the Kampala Technical Institute.¹⁵⁸ The Government assessors had valued the land and the property therein at 64,340 shillings, but because the land was required urgently, the Ministry did not waste any time negotiating with the tenants and was thus forced to pay more than double the price at the market value. An analysis of the then current votes allowed to the two Ministries shows that the two sets of sums paid were considerable reductions in the total amount budgeted for the two schemes. In the end, the Ministry of Education had to solicit for funds from outside sources for the implementation of its extension plans while the Ministry of Internal Affairs has yet to find the extra money to replace the sums paid in compensation. Meanwhile, the Luzira Prison Expansion Programme remains incomplete. Thus, one consequence of paying compensation out of moneys earmarked for specific schemes is that the schemes may be rendered abortive or delayed. The acquiring authority achieves one object in obtaining possession of the land but fails in the other of implementing the scheme because the remaining capital is insufficient to cover all the financial commitments. Sometimes the authority may be forced to modify its original plan or to abandon it altogether. In nearly all cases the law stipulates that the body requiring the land will also be responsible for finding compensation money from its own vote.

The value of compensation is determined by considering a number of factors as prescribed by the law applicable and as affected by economic conditions prevailing at the time of compulsory acquisition.¹⁵⁹ The following points are likely to affect the value of compensation to be paid; the nature of the land, whether it is urban or rural, agricultural, industrial or commercial, land speculation, the speed with which the acquiring body intends to utilise and develop the land and the ability of the interested parties to negotiate for better terms of compensation. In all the three countries of East Africa, the law provides that the compensation payable shall be determined by the market value of the land and of the property thereon. The question as to what is the market value of any given land has been the subject of judicial interpretation in the East African courts.¹⁶⁰

In *Collector v. Hentulla and other* (1968) ¹⁶¹

the City Council of Nairobi decided to purchase compulsorily certain land owned by the respondents for a highway improvement scheme. Under the Indian Land Acquisition Act, a collector was duly appointed to assess the value of the land. The collector decided, as a matter of law, that part of the land, which had been shown as intended for roads on an approved subdivisional plan, was of no value, and on that basis assessed the value of the land at £1,737. He also, in case he was wrong in his decision on law, made an alternative assessment. At the request of the respondents the Collector referred the case to the High Court where the judge decided that the Collector had erred in law in that he should not have taken into account the plan in assessing the value of compensation. After having listened to witnesses including five valuers, the

judge assessed the amount payable at £12,000. This figure was enhanced to £13,800 by the application of section 23 (2) of the Act which stipulated that fifteen per cent was to be added to the figure assessed. The Collector appealed on a matter of Law and the respondents cross-appealed on the facts, challenging the judge's valuation as being too low. The appeal was allowed by the three judges of the Court of Appeal on the ground that it was unrealistic on the part of the judge to ignore the existence of an approved plan. The cross-appeal was dismissed on the ground that the judge had misdirected himself about the evidence of the valuers and that had he not done so, he could not possibly have set a higher value on the land than was realistic in the circumstances. The three judges agreed that the true figure of the compensation should be reduced from £13,800 to £6,900, that is exactly half of the sum assessed by the judge. In reaching the new figure the learned Justices of Appeal did not use the same reasoning. Giving the main judgment Spry, J.A., said,

"After reading the evidence, I am left in no doubt that while eventually much of this land may possibly be developed, it was not, at the relevant date, attractive to any potential developer and while much of it would probably be built on, if permission could be obtained, it would be expensive to do so and permission would not have been likely to be forthcoming. I think that anything which might influence a potential purchaser must be relevant when determining the market value of land."

The President of the Court, Sir Charles Newbold, P., was of the view that while the existence of the plan must have a considerable effect upon the value of the land, nevertheless there is always the very

real possibility that the land could be dealt with in a way different from the plan or that the plan might be altered sufficiently to make a considerable difference to the value of the land which was acquired. Moreover, the learned President was not prepared to argue that any definite sum of the market value could be reached. He observed,

"Any assessment of the amount by which the normal market value of the land set aside for road reserves would be reduced by the existence of this plan must, of course, to a large extent be arbitrary and a matter of first impression, and therefore capable of considerable variation between valuers, and indeed, between different judges."162

Nevertheless, the President of the court gave the best consideration he could in the matter and reduced the value accepted by the judge to fifty per cent. Law, J.A., did not consider it wise to question the valuation reached by the trial judge after listening to expert witnesses. He regarded the valuation to be independent of the other sets of sums proposed by the valuers. Thus, he was prepared to reduce the amount not on the facts but on the point of law involved, namely the effect of an existing plan on the value of land calling for compensation, which would be "a restriction on the user of the land or part of it." It may be deduced from this case that the following factors can affect the value of compensation, namely, a plan or scheme of the local authority, road reserves, actual and possible variations in the existing plans, the influence of valuers, the first impressions of judges, the attraction to developers, the possibility of obtaining planning permission and the cost of developing the land.

In Abdulla and others v. The Collector for the City Council of Nairobi and Coronation Hotel v. The Collector for the City Council of Nairobi (1958),¹⁶³ two cases were almost identical and as they concerned the same plot, they were heard at the same time. The facts in each case were that a certain plot of land and the buildings thereon had been acquired for the Nairobi City Council in connection with a project to improve and extend Victoria Street in Nairobi. The notification under section 6 of the Indian Land Acquisition Act, 1894 that the land was required for a public purpose was published on March 1st, 1955, and the Collector assumed possession as from January 1st, 1958. The applicants were tenants of business premises on the site and in possession. The Collector was authorised by the Town Clerk to give an undertaking that the City Council would not require any of the applicants to leave their premises before December 31st, 1960, at the earliest, provided that they paid to the City Council the equivalent of the rent that was payable to the landlord immediately before the Collector assumed possession. The City Council further empowered the Collector to give an undertaking that the amount of such rent would not be increased so long as the tenants were allowed to remain in possession. In spite of the undertakings, all the applicants claimed compensation from the Collector under S.23 of the Act. The Collector refused to award any compensation on the ground that he considered the undertakings given by the City Council to have given the applicants as much as they were entitled to under their existing tenancies at March 1st, 1955 or as at January 1st, 1958. The applicants thereupon applied for the matter to be referred to the Supreme Court for determination. The applicants held monthly tenancies which were protected under

the law. The court held that the compulsory acquisition did not affect the tenancies as they stood on March 1st, 1955, since formal possession was not taken until 1958. But even after 1958, the tenants were offered terms of occupation which were not less than what they could have insisted upon against a landlord who wished to demolish the premises and therefore the Collector was justified in his refusal to award the full market value of the interest as at March 1st, 1955. It was further held that the court was satisfied that more of the applicants would have embarked upon substantial improvements had the acquisition not taken place and therefore there had been no diminution of the profits of the land between the time of the publication of the declaration and the time of the Collector taking possession. Consequently, no compensation could be paid for loss of profits. The court found however that the applicants were entitled to fifteen per cent of the value of their interests as at March 1st, 1955 for the prejudice occasioned to them by reason of the compulsory nature of the acquisition in respect of their tenancies which, in 1958, had nearly two years to run. In reaching its decision the court was guided by a number of points. The City Council did not have the necessary funds to complete its planned scheme and the site was likely to lie dormant until the end of 1961. At the time of application none of the tenants had been disturbed in his occupation of the premises. The statute which gave protection to the tenants was due to expire in 1956¹⁶⁴ and there was no evidence that both the Act and the tenancies would have been renewed for a further period or term, as the case might be. Thus, the applicants could not have claimed an indefeasible right to either an extension of their existing tenancies or the grant of new tenancies. If the

City Council had acquired by ordinary purchase the interest of the applicants' landlord without acquiring the interest of the 'present applicants' as well, then the interests of the latter could have been determined on six months' notice and a claim for a new lease could have been defeated by establishing an intention to demolish the building. Rudd J., cited a number of Indian authorities with regard to the position of a tenant whose premises are compulsorily acquired. Ghosh on "The Indian Land Acquisition Act" had said,

"The ordinary rule that had been adopted in England in the case of compulsory acquisition of land occupied by tenants whose tenancies are determined by notice or efflux of time, is that the tenants are not to be awarded compensation for loss of profits even though they have reasonable expectation of continuing in possession or having the lease renewed. The leading case is R.V. Liverpool and Manchester Railway, 4 Ad.& E.650"165

Aggarawala, in his 'Compulsory Acquisition of Land' stated as follows:

"In the case of an occupier being a tenant the question would be what was the probability of the business being continued at the place if the land were not acquired and the length of the unexpired period of the lease would be a relevant matter for consideration. In the case of a monthly lease terminable at any time by notice at the lessor's will the compensation would be very small or even nil whether as injurious affection, loss of earnings or removal. The practice usually is to allow, nevertheless, two or three months' income to cover all these items.... Too much stress, therefore, should not be laid on the circumstances of a lease being only a monthly lease but all the circumstances including the period for which the business has actually been carried on at the place, though on such precarious

occupation, and the probabilities judged from the local conditions and practice, ought to be taken into account."¹⁶⁶

The judge in this particular instance approved Gosh's exposition of the law but was not impressed with Aggarawala's reasoning which he regarded as too vague to be of any guide. The East African current law on the subject is similar to Gosh's reasoning and as pronounced in R. v. Liverpool and Manchester Railway Co. (1) (1836).¹⁶⁷ In that case a tenant who had a lease for seven years had it renewed several times for a period of a further seven years. At the time of the last renewal the landlord refused to grant a lease for fourteen years and he granted a renewal for seven years only. At the same time he assured the tenant that at the expiration of the term he would not be turned out. On the strength of this assurance the tenant incurred expenditure on improvements but the railway company, having bought the landlord's reversion, served notice to quit at the expiration of the term. It was held that the tenant had no interest for which the company was bound to make compensation under the then relevant statute. It may be noted that English law has been radically changed since the decision in R.V. Liverpool and Manchester Railway Co. It is now a well-established principle that, unless no other interpretation is possible, justice requires that statutes should not be construed to enable the land of a particular individual to be confiscated without payment. Nor is any intention to take away property without compensation to be imputed to the legislature unless it is expressed in unequivocal terms. Section 58 of the English Planning Act of 1947 allowed the owner of a freehold or leasehold interest to submit a claim for compensation for loss of development value representing the difference between the "unrestricted"

and "restricted"¹⁶⁸ values of interests in the land. The same principle is retained in the current planning legislation. It is one of the characteristics of the nature of the Received Law that often the country of origin changes the law to conform to modern conditions and needs while the receiving country continues to operate under the old law notwithstanding changed circumstances. This is particularly true of laws that had been codified when adopted in the latter country.¹⁶⁹

The notion of the market value itself has been the subject of judicial interpretation in East Africa. In Puran Chand Many v. The Collector,¹⁷⁰ the court was faced with the determination of the true market value to be paid in compensation under the exercise of compulsory acquisition. The court was of the opinion that market value consists of "the price which a willing vendor might be expected to obtain from a willing purchaser." Further not every purchaser that shows willingness to buy can be accepted as the standard example. He must be one who "although he may be a mere speculator, is not a wild or unreasonable speculator.... He must be of good ability and well qualified to put the land acquired to the best advantage." In considering whether to use an actual sale as a yard-measure of value, the court must consider whether the purchaser had paid so high a price that the court may consider that he has not displayed the ordinary caution which a purchaser of land should display. In addition, where the value is to be fixed by reference to potential future use of the land its future must not be entirely conjectural. It must be "estimated by prudent business calculations and not impractical imagination. The notional willing purchaser must be taken to be one who will make these calculations. (Again) a prudent purchaser will calculate only such probabilities as are moderate and capable of practical realisation."¹⁷¹ It follows by necessary analogy

that a willing vendor is the one who has the ability to demand such price for his land as will be fair, reasonable and capable of being accepted as realistic under the circumstances of the sale and the market demands.

In the majority of cases the authority intending to acquire land compulsorily will authorise its surveyors to investigate the probable value of the land and the status and description of the owners and occupiers thereof before disclosing to the interested parties that it intends to acquire the land for a public purpose. This is done under the general law which permits public authorities to investigate any land whether public or private and to take samples therefrom without disclosing any particular reason for doing so. The findings of the investigation give the authority an opportunity to prepare its acquisition strategy and to take the interested parties by surprise.¹⁷² The authority will aim at obtaining the land with a minimum of procedure and cost. It has been noted that as soon as the declaration of compulsory acquisition has been published the interested parties have a few weeks within which to declare and claim their interests from the assessment officer, the collector or the Minister, as the case may be. It is only on rare occasions that the acquiring authority treats the interested parties as one body to which a general offer could be made.¹⁷³ In most instances the authority will negotiate with and make offers of compensation to them on an individual basis. It would be unusual not to find some of these individuals accepting first offers and once this has happened the rest are pressured into accepting their offers on similar terms. An examination of actual cases involving compensation in respect of land compulsorily acquired has shown the following phenomena: owners and occupiers who are educated and who may have some political, economic or social influence are approached first and usually

they are offered generous terms of compensation in money terms.¹⁷⁴ The evidence is that most of these will have the benefit of advice from expert valuers and in some cases of legal representatives. Their offers are not published even though they are recorded in official files. The next group to be approached are the peasants with little of the influence alluded to above. The authority offers alternative or plots of land to which they can be moved and some compensation in money terms for their houses and crops, if any. Mere tenants and residents who have no houses or crops to declare are usually offered nothing. There have been occasions when the acquiring authority was so 'generous' that it made an offer of a few pounds to this group or persuaded the Government to exempt them from paying graduated tax for several years especially if those exempted were being moved from their residences and 'shambas' to some other region of the country.¹⁷⁵ In the latter event, the acquiring authority will normally pay the removal expenses. It is this kind of approach which explains the irrationality in compensation sums paid to interested parties under the Luzira Prison Expansion scheme that has been cited above. It can be seen therefore that the value of compensation may be determined by the bargaining power of the parties. Indeed, in Collector v. Heptulla And Others (1967)¹⁷⁶ there was no doubt that in spite of the number of experts appearing, the judge was greatly influenced by the forciful argument made by one of the valuers representing one of the parties. The judge simply selected the figure proposed by this particular expert as the sum he would order and the selection became the subject of an adverse comment in the appellate court.¹⁷⁷

Although a contention was made earlier that the acquiring authority should not be put in a position where it has to pay an excessive compensation

likely to jeopardise its implementation programme, when, as between the interested parties, compensation is paid unequally, injustice results. It is then reasonable to argue that the compensation is unequitable. It is submitted that the only fair method of compensation is where the interested parties receive equal amounts of money in proportion to the interests they hold in the land. In cases where some other land is given in exchange of that acquired it should be possible to ascertain the value of that other land so as to pay the difference in value to the parties affected. There is another important principle which is often overlooked in assessing the value of the land to be paid. Most of the people in the first group are usually relatively wealthier. They are mostly civil servants, chiefs and commercial people who may have other lands and sources of income and therefore unlikely to be greatly affected by the interests affected by compulsory acquisition. In many cases this group forms the landlord class of which the peasants are tenants. Invariably, the landlords live and work outside the land to be acquired. For the peasants, the land, the houses and the crops may constitute the only home, environment and source of income.¹⁷⁸ Their removal from the shambas and the destruction of their homes and crops upsets their social life and occasionally leaves them destitute. Consequently, if the rules of compensation should err on the side of generosity it should do so for the benefit of the less able and least privileged members of society.

In the context of England, Farrier and McAuslan¹⁷⁹ have argued that whereas compensation is expressed in terms of economic value - what Davies calls the economic benefits of land which are expressible in money and therefore capable of evoking comparisons between the

financial value of one stretch of territory and that of another - there are other considerations which cannot be expressed in monetary values. Among these may be mentioned the special hardship of compulsory dis-possession from a home, the psychological damage caused by the loss of the home, the divorce from one's relatives and friends and the loss of familiarity with one's well-established environment. The learned authors note that friendship localisation tend to be greatest for those who belong to the manual classes in England which may be compared to the peasant class in East Africa. Moreover, in East Africa the mental anguish of being departed from one's relatives may be greater than that observed in England because of the close affinity that prevails in the East African concept of the extended family. Farrier and McAuslan argue further that the types of loss perceived by those forced to quit their homes should be taken into account when determining the amount of compensation due to them. In point of fact the authors' contention is borne out by a number of pre - 1919 cases which admitted a broad enquiry into 'the value of premises to the owner' by such words as "the value to the owner as it existed at the date of taking, not the value to the taker" and "the value to be ascertained is the price to be paid for the land with all its potentialities and with all the use made of it by the vendor." The argument put forward by the two lawyers is not merely that the evaluation of other consideration\$would make compensation more fair but that "increased compensation will act as a palliative to increased development." In effect people are likely to accept public development of land more readily if they have received adequate compensation. There is however, one important distinction between the majority of interested parties affected by compulsory acquisition in East Africa and their counterpart in England. In England those who are affected "include

many more members of the articulate middle-classes ... who are quick to complain and make their views felt if they feel, however unscientifically, that a law is unjust."¹⁸⁰ In East Africa, on the other hand, many of the people affected are inarticulate, poor and reluctant to complain to the relevant authorities. Hence, the plea that the rules of procedure should be simplified as a buttress against their weak bargaining power.

CHAPTER: FOUR
LAND LAW REFORM IN EAST AFRICA
INTRODUCTION

In discussing the land tenure systems, the acquisition of and compensation for land in East Africa certain defects and anomalies have been revealed to suggest a need for the reform of the laws applicable. In this part an attempt is made to examine and suggest proposals for such reform, at any rate, in so far as they are related to the advancement of the notions and principles of urban planning and development. At a recent Kampala seminar a number of reasons were put forward as justifying an appeal for the reform of East African land laws and allied property laws.¹ The reasons were summarised into six categories and these had been examined, analysed and expounded in the various papers which were presented to the seminar.² Firstly, there are the present economic, social and political programmes and policies currently pursued in East Africa. These would seem to imply serious consideration of land law reforms. Secondly, land is the permanent basis of all planned activities to be effected on land. The greater percentage of the total area of land in the region, including substantial areas of urban centres is under customary systems of land holding. Consequently, it may, for purposes of modernisation, be necessary to consider whether or not customary tenure is suitable for the implementation of the East African development schemes. Thirdly, there is the general consideration of harmonising the policies of the peoples and governments of the region based on the East African Treaty of Co-operation within the existing land laws. Fourthly, land law reform may be considered from the view point of bringing about social and economic justice to the

inhabitants of East Africa. This might be done by putting forward or postulating new criteria or standards for land distribution and use. Fifthly, the urban centres and other heavily populated areas have continued to witness multiple land disputes and litigation . It may therefore be necessary to examine certain proposals designed to establish unchangeable boundaries which may minimise these disputes and litigation . It may be said in passing that disputes delay planning proposals while litigation tends to reduce the amount of money available for development. Lastly, there is the question of what to do with the laws inherited from the period of colonialism. It is pertinent that these should be examined since it may be necessary to reject those which are unsuitable and to retain only those likely to promote the general interests of the people and the policies of the respective Governments of East Africa.

Coupled with the question of ownership and control there is also the problem of alienation and acquisition of urban land for both public and private purposes. A number of the procedural rules discussed earlier are cumbersome and alien to the people concerned while others do not always protect the rights of the interested parties and others make it that much harder for the acquiring authorities to proceed with their proposed schemes of development more cheaply and speedily. Some of the suggested proposals for reform may simplify these rules either directly or indirectly. Further, it has been observed that the practical experience of the way in which compensation works shows grounds for improvement. Land Law reform may therefore rationalise the whole system of compensation on the basis of equitable treatment of the interested parties irrespective of their social or political status or of their sophistication in bargaining for better terms. In making suggestions for the reform of the land laws

it is useful to bear in mind that the growth of the East African urban centres is such that planning and development measures have often to be taken fairly quickly but in a co-ordinated and systematic manner.³

OWNERSHIP OF URBAN LAND:

PRIVATE OWNERSHIP:

In relation to urban planning and development, the incidents and rights of land ownership may be of considerable importance. This is because ownership is likely to determine not only the type and amount of land available for urban development but also the procedures for the protection of owners and the amount of compensation payable to them in the event of the land being acquired for public purposes. We have observed that the availability of land, the manner in which it may be acquired and the price to be paid for such acquisition may each affect the speed and success of planned schemes and projects of development.⁴ It is thus relevant to discuss the form of land ownership which would be most appropriate for urban land. Some people have argued that what is important is the manner in which land is controlled and not ownership per se.⁵ The argument would be plausible if ownership per se did not have any value or if the land owners did not put such importance on ownership. In practice however this is the position. All the writers on land in East Africa have found that the people there do put a value on the notion of land ownership and that for traditional, social and economic reasons most of these people would not wish to depart with their ownership easily or without adequate compensation, and that this attitude prevails whether or not the particular land is developed and whether it is owned under modern law or under customary tenure or whether it is owned individually or communally.⁶

There are two types of land ownership, private and public ownership. The question therefore is which of these two types of ownership is the most appropriate for urban planning and development. It must be conceded from the beginning that there are convincing reasons for supporting

either of the types. There are people who believe that private ownership of urban land would be the most suitable form in East Africa.⁷ They argue that hitherto East Africans have shown no appreciable interest in settling permanently in the urban centres or investing into their development. It is further argued that the reason for this is that the indigenous population has never been encouraged to own land and property in urban areas and therefore they lack an incentive to be concerned with urban planning and development. They see the essence of private ownership as the security of tenure and the realisation of human nature which tends to lead to the notion that unless one has a paramount interest in the land by way of ownership per se one is reluctant to develop that land with the possibility that the accruing benefits may be enjoyed by others. Thus, in advocating private ownership of land the FAO Africa Survey Report stated,

"In much of the territory, the right to occupy land is considered irrevocable, in many areas it is the fact of cultivation, the establishment of the crops or the construction of a house which guarantees individual use for as long as the signs of individual activities persist."⁸

Both the East African Royal Commission Report and the subsequent World Bank Report point out that individual ownership inculcates economic sense of responsibility.⁹ The ability of an individual owner to sell his "ownership" to other individuals opens the door to the mobility and private initiative on which a greater part of economic progress tends to depend. One of the most convincing arguments for private ownership of urban land goes as follows: Hitherto the bulk of urban development has been the responsibility of governments and local authorities as exemplified by most development projects, institutional and private

housing and the various urban activities of the parastatal corporations. However, the situation is developing to a stage when government functions will be so many and capable of taking up most of the public funds that the development of urban centres falls on the shoulders of private owners and developers. When this change occurs private individuals will need an incentive and money to shoulder the responsibility.¹⁰ Private ownership will create this incentive and enable the owners to solicit for and make investments in the land because they will have acquired security of tenure and there will be no immediate threat that the land together with their investments may be taken away from them at any time. Individual owners will be enabled to raise capital by means of leases and mortgages and this will increase land productivity.¹¹ A contrast is made between this kind of ownership and public ownership where covenants of land holding and development are established by law and may not be negotiable between the parties without authorisation from the supreme law-making body of the land and where, in any event, the public landlords are entitled at any time to give notices to quit to tenants irrespective of whether or not the tenants have realised the fruits of their investments. As a result, banks, building societies and money-lending firms are reluctant to lend money or accept mortgage securities on the basis of land not owned by the borrowers.¹²

Tanzania converted all the land into public ownership and therefore the examination of private ownership is only relevant in the case of Kenya and Uganda. The fact that since the advent of colonial administrations in East Africa land in towns and urban centres has vested into public ownership does not lessen the importance of this examination. In the first place, it has been noted that when founded the towns and urban centres were declared over small parcels of land. It follows that any subsequent extensions of urban planning and developments have had to be made in lands

previously held privately or communally. In the second place, it does not always follow that whenever the Governments or local authorities decide to carry on further urban planning and development it is the land in public ownership which is most suitable for this exercise. There have been occasions when the only land suitable was in the ownership of individuals or tribal holding. Thus, in spite of the availability of public lands in places like Nairobi, Kampala, Mombasa, Kisumu, and Jinja, public authorities have found that in order to effect sound and co-ordinated plans of urban development they have had to encroach upon other parcels of land in private or communal ownership. In the third place, there are certain services, like water services, electricity, roads and institutional buildings whose establishment and construction may have to be extended or sited over long distances stretching over both private and public lands. This point is illustrated clearly by two recent reports dealing with the Nairobi squatter areas and the Kampala structure^e, plan respectively.

The first report dealt with an investigation undertaken in the largest squatter area of Nairobi known as Mathere Valley.¹³ The population of this valley was 1060 people in 1960 but to-day this population has had a tremendous increase and is in excess of 30,000 people according to the latest estimate. Most of the land in the valley had been privately owned. With an increase in population and the decision to extend the City boundaries, the Nairobi City Council started re-examining its policies towards areas such as Mathere Valley. The Council was particularly worried by the land buying activities taking place in the valley and the apparent disregard of planning regulations by the land owners and speculators operating therein. The Council was interested in ascertaining whether it could have the power to enforce its bye-laws and regulations in the valley and whether in default of such enforcement it could demolish buildings constructed by residents. The Council also desired to discourage

or prohibit any unplanned development likely to result in problems of health and future redevelopment. It is to be appreciated that at this time the council was not considering or preparing any specific plans for the valley. They were being realistic in taking the view that future needs of the city would embrace the inhabitants and land in the valley and that it was necessary at this stage to analyse and look for solutions to the problems that were peculiar to the area. A great deal of time and money were envisaged to be spent on this exercise and it is questionable whether this would have been necessary if the land had been in public ownership.

The second illustration concerns the findings and observations contained in the Report of the Kampala Development Structure Plan which was published in 1972.¹⁴ The report stated that the land tenure systems of Kampala have had and continue to have considerable influence on the way the city has grown. It noted that whereas only 7% of the land within the city is owned in freehold, nearly half of it is private mailo land. Of the remaining public land 30% is leased to the City Council and the Government retains 10% for its institutions and departments. The residue is leased to private individuals or reserved for contingent purposes. However, part of the residue is being converted into freehold in favour of parastatal bodies and statutory undertakers such as the Kampala and District Water Board, the Uganda Electricity Board and the East African Railways Corporation. Thus, although the relevant statute provides that all the land within the city shall be public land, in practical terms it is seen that only 30% of the land is at the disposal of the City Council and less than that percentage remains undeveloped. However, it is to be noted also that there are various types of tenure between different parts of the city. For example, in the Northern zone of the city private mailo

land makes up 91.5% of the total while in the Central Zone it accounts for only 23%. Having broken down these percentage figures, the report makes several important observations in respect of the land which is privately owned. Firstly, the land has been so fragmented by sub-divisions and sales that a sample survey revealed that over half of the private mailo owners have plots of less than one acre while 95% have plots of less than two acres. This kind of fragmentation is more pronounced in the peri-urban areas where urban planning and development meets with the obstacles of private ownership of land. Further, sub-division has normally taken place in a haphazard fashion and has resulted in irregular shaped plots lacking satisfactory access, and which are difficult to service. Secondly, the Report observes that the City Council lacks clear cut powers to acquire private mailo land compulsorily for its various planning purposes. Thirdly, at present the Council is unable to recover the costs of street improvements from private owners and lacks adequate legal powers for effective control of unplanned and undesirable development in the privately owned lands.

Both the Nairobi project and the Kampala report were primarily concerned with technical and financial problems which arise when land in private ownership is considered for urban planning and development. In addition, there are other problems of a social and political nature which may be the direct or indirect consequences of the institution of private land ownership. The concept of private land ownership has developed in such a way that it has come to be identified with the profits that accrue from it in favour of the privileged few who happen to own land. This is contrasted with the notion of public ownership which, in theory, is supposed to benefit the community at large whether or not individuals in that community own parcels of land privately. The dichotomy between

the two concepts of land ownership may lead to divisions within society and determine social, economic and political values and status between those who own land and the landless.¹⁵ The value and purchase prices of private land are likely to be settled by market conditions of demand and supply with little or no interference from the rules of public law and in accordance with the principles of a capitalist oriented economy.¹⁶ The greater the demand the more costly the land becomes. Moreover, the conditions of demand and supply may be so artificially developed that they have no relevancy to the notions and needs of urban planning and development even though the realisation of the latter may be directly affected by the acceptance and operation of the former. As land becomes a freely exchangeable commodity there rises a class of speculators whose primary aim is to make large profits from the ownership and sales of land. In some cases such ownership or sales may not be conducive to good planning and development. They are designed to yield big profits for land owners and speculators; sometimes at the expense of the needs of the general population. A number of speculative land sales and deals are currently to be found in East Africa particularly in slum-dwellings, shanty towns and peri-urban locations. Unplanned buildings are constructed and sold to the landless and to the low-income groups at exorbitant prices and rents.¹⁷ The buildings will not normally meet the modern standards of decent living. They are often overcrowded. They may be infested with vermin and in need of reasonable repair. They usually lack amenities and services which are essential to life and health.¹⁸ On the other hand, because of the way in which private ownership has evolved, it is difficult for public authorities to direct and control developments in these areas. The reason for this is that the people who own and operate land transactions in these areas tend to succeed in obtaining greater financial rewards

when there is no law that prescribes their activities. Slum areas and shanty towns, especially those in which there is considerable private ownership, become the haunts of criminals, prostitutes and drug dealers. These people are prepared to pay high rents for poor quality properties because the profitable activities in which they engage do not demand for or flourish in well planned and highly developed environment. They are likely to prefer locations with no access roads or lighting and where the owners and users of the land and buildings cannot be easily identified. This is because such amenities and services might mean effective supervision and inspection which tend to discourage the activities and might lead to the imposition of legal penalties if the perpetrators of the activities are detected and convicted of wrong-doing. For these reasons planning laws and decisions affecting these areas are viewed with suspicion and indifference on the part of those who stand to lose financial advantages. In some cases there may be organised opposition against the laws and decisions. Moreover, of the people who derive benefit from the state of affairs that exist in shanty towns and slum dwelling, very few of them actually reside there. Many will have chosen to live in the more developed and better residential quarters of the city or town and will often operate their varied business through agents or sub-agents. Therefore they are not affected by the bad conditions and squaller which characterise the lands they own.

It is also true to say that private land holding leads to the emergence of a class of people who are capable, by virtue of their holding, to wield considerable political power and to exert influence and pressure on national and local leaders who are responsible for the determination and formulation of urban planning and development policies.

For instance, in Buganda the arrival of the colonial administration meant that the chiefs' loyalty was divided, for, besides the duties and services they owed to the Kabaka, they also had to serve and observe the orders of colonial administrators who resided mainly in urban centres. The chief found it necessary and expedient to acquire land in or near the urban centres from where they could ably serve the new masters. Thus many of the chiefs put claims to some of this land and asked the Kabaka to recognise and consent to their claims as personal possessions.¹⁹

Land became to be regarded as a source of political power. Elsewhere in Africa tribal and clan leaders used their influence as trustees of the communal land to gain economic and political power.²⁰ Sometimes the

chiefs' demands were so excessive that the courts were asked to intervene for the denial or modification of the demands. For example, in

Amodu Tijani v. Secretary, Southern Nigeria,²¹ the appellant who was head chief of the Oluwa family claimed compensation for land which had been compulsorily acquired by the government. It was contended on his behalf that as the title-holder for the family and community he was entitled to the full value of the family and community land acquired. The Chief Justice held that he was only entitled to be compensated for his "seigneurial right of control and management" and not on the basis of absolute ownership of the land. The chief appealed to the Privy Council and in dismissing the appeal their Lordships held,

"As the result of cession to the British Crown by former potentates, the radical title (in Lagos lands), is now in the British Sovereign. But that title is throughout qualified by the usufructuary rights of communities, rights which, as the outcome of deliberate policy, have been respected and recognised."²²

Since the chiefs were the effective authority within their respective tribes and communities, they became the interpreters and communicators of government policies to their people during the time of the colonial administrations and since independence. They were and still are the negotiators with officials of central governmental bodies for planning and development proposals and schemes to be undertaken in their locations. As the intermediaries between the people and the government, the chiefs possess considerable power of control and management. They have been able to persuade, coerce and convince the members of their communities that unless their rights and interests in land are acknowledged and respected they may not be able to speak favourably of the community members before the officials of the central governmental bodies and that in any event tribal or communal members who do not act in accordance with the chief's wishes and orders might be deprived of their private land holding.

During the colonial period in East Africa the creation of private ownership of land and the retention of communal tenure were deliberately encouraged as necessary for the implementation of the then development policies. The economic, social and political affairs of the urban areas were entrusted mainly to the migrant communities of the region. The idea was that those members of these communities not directly involved in the actual administration of the territories were the most capable and therefore likely to utilise urban lands more profitably and economically. The colonial administrations were founded upon a capitalist system and it was only natural that they should have encouraged the emergence of a capitalist class system²³ tending to be racially based. The Governments found it economically and politically expedient to grant titles of freehold and leasehold on individual basis in order to enable the urban

dwellers to be responsible for the financing of urban planning and development. It is to be appreciated that the majority of the migrant communities had come to East Africa with sufficient savings to invest in the urban land and had had considerable experience in the mechanics and procedures of urban development in the countries of origin. Those who did not possess adequate funds found it easy to raise loans from banks and building societies because these institutions were owned and controlled by people from the same background and people who were anxious to see the success of this policy. In addition, the migrant communities enjoyed a monopoly of trade and commerce in the region and this was often guaranteed by public policies and occasionally reinforced by rules of law and legislation. When the Legislative Council of 1945 was debating the Co-operative Society Ordinance Bill intended to enable Africans acquire the right to participate in Trade, Mr. Jaffer, an Indian representative expressed the concern of the Indian community in the following terms,

"I have no desire, Sir, to raise any racial issues arising out of this bill but as an Indian member I feel it is my duty to put forward the Indian view point on this Bill..... I therefore trust, Sir, that there is no intention behind this measure to eliminate the Indian Trader from his legitimate and rightful pursuits in Trade. On this point I crave, Sir, for a statement from your Excellency so as to set at rest the anxiety of the Indian Traders who are long established in trade in the Protectorate."24

The honourable member was re-echoing the fears of the migrant communities who saw the introduction of the African to Trade and commerce as a danger to the public policy of urbanization and development. Meanwhile, the Africans were expressing grave misgivings about the policy, but for a

long time they were denied representation in the council which made the laws and approved the policies. The official attitude was as expressed by Lord Milner when he said,

"The only justification for keeping an official (European) majority in any colony is that we are convinced that we are better judges, for the time being, of the interests of the native population than they are themselves."25

However, there were unofficial members of the Council who wished to see the interests of the Africans represented there and in particular the honourable Dakin pressed for this representation on the ground that as then constituted the members were drawn from a similar walk of life and though they might have been conscientious advisers they were not conversant with specialised subjects such as education, medical and African Welfare which he saw as forming a large part of Government activities in the future. When eventually the Africans obtained a token representation in the council they lost no time in urging the administration to modify the policy. Thus, Kawalya-Kagwa, in his maiden speech clarified the position by stating, *inter alia*,

"I hope your Excellency will allow me to refer to the responsibility which lies on the Government to advance the interests of African people in its care. I feel that the three important points which should occupy Government are: improvement of health, elimination of ignorance, the improvement in living conditions. Sir, I should like to draw attention to the fact that the introduction of cash economy has disturbed the African society and shaken (it) to its very foundation - our customs. Unless the African is trained in the new economy and the art of earning money and spending it wisely he will be ruined and his progress will be impossible."26

The Africans' appeals for change of policy at this time and later were not aimed at a radical transformation of the whole society or at increasing

African participation in urban development. On the contrary, they were intended to enable the educated elite to emulate the activities of the migrant communities and to attain their standard of living. Indeed, this is what occurred and the process of emulation continued into the post-independence era. It was not until the mid - 1960's that the Tanzanian Government chose an ideological commitment to socialism and rejected the option of private ownership of land.

In respect of the indigenous population the official policy was to confine it to the rural and tribal areas where they would continue to cultivate the land in accordance with traditional methods and to the dictates of their immediate needs.²⁷ They would remain under the jurisdiction of their chiefs and if they went to the urban centres they would be regarded as temporary visitors. Thus, few of the indigenous people lived in the towns, on equal grounds with the immigrants. Those who found themselves obliged to go to the towns did so for the purpose of earning enough money to pay for dowry, the education of their children, government taxes and for other necessities. They had no intention of nor were they encouraged to found homes outside their tribal or communal lands. While seeking temporary employment in the towns these people had to find accommodation. The land owners and the chiefs who owned properties in urban and peri-urban centres found them targets for exploitation. The land proprietors found it more advantageous to receive small rents and other tributes from the temporary tenants than to sell or let to long-term developers who might replace them as political forces in these areas. Because the tenants were temporary with no desire to settle permanently they did not object to the institution of private ownership of land and its consequences.

The policy of confining the indigenous population to the rural areas of the territories did not altogether succeed. The educated class

found the traditional villages and the model of life there unacceptable to the new values they acquired in missionary and Government Schools.²⁸ Urban centres were identified with success and good living because of the facilities and occupations they seemed to offer. The educated youngmen and women flocked to the towns not as temporary visitors but as permanent residents. They resented the fact that their counterparts in the migrant communities got employment so easily and enjoyed higher standards of living than theirs. Not unnaturally they sought places in urban residential quarters and positions in urban institutions of employment.

Hitherto the peasants had used the land for cultivation, the grazing of cattle and the provision of shelter. The simplicity of living, the absence of permanent buildings and houses and the lack of complicated machinery of commerce and industry meant that private ownership of land was not often challenged even when it seemed to operate against the interests of so many peasants. It had less impact on the occupiers and users than it would otherwise have done if the areas were more industrialized and commercially oriented. With the coming of independence, the situation changed. At the time of the coming of the British Colonial administration, little land changed hands through sale or purchase. By the 1930's evidence began to appear that land was selling at modest prices. Thus Thomas and Scott observed,

"By succession and sale these mailo lands now become transmissible to other natives who might not be attracted to, or might be unfitted for, the duties of chieftainship. The tribute - Busulu - of the occupiers was gradually transformed into a money rent due to private landowners."²⁹

Admittedly, the land was still purchased for a few shillings per acre but

the prices were increasing steadily. In 1964, West noted that the purchase prices of land were ranging from 1000 shillings per acre in the rural areas to 10,000 shillings per acre in urban centres. West proceeds to comment on the situation in Buganda,

"Much of the building for residential and commercial purposes has taken place upon land vacated by customary tenants and thereafter developed by the landowner himself. Alternatively, the landlord might lease the vacant land probably to a non-African, who may erect modern multi-storey buildings. Yet, another method.... is for a landowner to come to an arrangement with an existing busulu tenant. The tenant will introduce to the landlord perhaps four or five new comers, prepared to pay a premium for the right to occupy a small part of the Kibanja. Each premium of perhaps shs.1000 is shared between the landlord and the busulu tenant. Thereafter, the new tenants pay a rental of perhaps shs.120 per annum direct to the landlord."30

By 1969, the value of most of the land within and around the city of Kampala was estimated at between 5,000 and 30,000 shillings per acre by the government official valuer.³¹ However, these prices were liable to change from time to time depending on the policies and development plans of the Government and public bodies. Two case studies may be cited to illustrate this speculative phenomenon. In case study A, X, a mailo landowner, agreed to sell one acre of his land to Y, a civil servant. The land was situated at Bukoto, a suburb of Kampala City. The official evaluation of the land in this area put the price at 5,000 shillings per acre. The civil servant agreed to buy the acre for 5,500 shillings. The agreement was reached orally and the parties agreed to have it reduced into writing by their respective advocates. While the lawyers prepared the conveyance, the Kampala City Council announced that they were going to widen and tarmacadamise the road through the Bukoto area. Immediately, the value of the land in

the area shot up. X informed Y that unless he was prepared to pay 15,000 shillings for the acre the deal was off. Since no written contract had been made Y could do nothing. In the second illustration, case study B, the then civilian Government of Uganda announced in 1969 that all official mailo land was to be converted to public land without compensation. The statement was so vague regarding the status of private mailo land that many mailo land owners assumed that their land was to be similarly affected. M, a mailo landowner, offered to sell his land situated in Kibuye - some 3 miles from Kampala. According to the official valuation of the Department of Lands and Surveys the land in Kibuye was valued at 10,000 shillings per acre at the time but M was offering to sell at 4,000 shillings per acre.³² N, a civil servant speculator bought two acres of land from M. Three months later the Public Lands Act, 1969, was passed with a provision preserving private mailo land. Within several months N was able to obtain 15,000 shillings for half the land he had acquired from M. These two examples show the speculative nature of urban land. Because of the notion of private ownership and the freedom it allows proprietors to exploit shortages of land and manipulate the market situation the interests of private owners often prevail against the needs of the community.³³ Since independence land has become so valuable in the towns that governments can no longer allow the notions of capitalism to dictate its availability and mobility in the face of the acute problems of urban population and development. It is suggested that public ownership is the better form of controlling some of these problems.

Some people have argued that the preservation of communal tenure and the system of tribal lands such as the mailo land is desirable from a social point of view because it has a cohesive force on the community.³⁴ To-day it is becoming apparent that this argument cannot be maintained. The influx of people into the towns has meant that the urban communities are now

composed of people from diverse tribes whose notions and ideas of landholding differ considerably. In rural areas there has been considerable migration from overpopulated areas to sparsely populated areas.³⁵ In some cases the governments have given encouragement and material assistance to those immigrating. Since independence, inter-tribal mixing and migration has been seen as a rational policy to build 'one nation, one people and one government'. The influx of other tribal members to a hitherto homogenous community means that the traditional rules of landholding in the community experienced a radical change.³⁶ Moreover, the chief's influence which had begun to wane during the colonial period was rendered unimportant by the emergence of political parties and nationalist movements of the post-independence era. The authority of the chief ceased to command support of the people and could no longer be used as justification for the retention of communal tenure. The traditional form of land holding came to be challenged by the sophisticated elite who began to claim the right to be registered as individual proprietors of the lands they happened to be occupying at the time. The challenge found legal support in such measures as the registration of land ordinances and grant of freeholds.³⁷

Governments and local authorities in East Africa, as in many other countries, have often found that in planning the development of urban centres they have to overcome certain obstacles created by the private ownership of land. Where the economic and political structure is such

that private ownership must be tolerated, as in the case of Kenya and Uganda, the Governments have simply accepted the fact and decided to deal with each obstacle of private ownership as it arises during the process of planning and development. For example, the Uganda Public Lands Act which was radical in many respects had to retain the incidents of and rights in private land holding even though the Government of the day was convinced that a uniform system of public ownership throughout the country would have been more preferable and certainly more conducive to effective planning and development.³⁸ The retention was prompted by political expediency - the fear of riotous opposition in the Kingdom districts - rather than any ideological commitment or economic theory. Similarly, in Kenya conformity with the history of land and the realities of economic and political factors meant that the post-independence Government would be forced to encourage private ownership of land in the Republic.³⁹ In Tanzania, the Government having decided to follow ideological socialism in its development policies abolished private ownership of land. On the other hand, it is conceded that the consequences of private ownership continue to play an important role on how this socialism develops in Tanzania. A number of the disowned private land proprietors have not been happy to accept the new regime of public ownership and in some instances, have mounted serious opposition against the Government of a one-party state. Writing about 'Class and Privilege' in Tanzania, Saul has observed,

"As early as the 1920's an elite was in formation which could be expected to learn..... many of the lessons of capitalist colonialism-possessive individualism, authoritarian style, numerous aspects of the 'inventional wisdom' concerning

development..... as elsewhere, this thin stratum played an ambiguous role, but the temptations of privilege and power were not ineffective.... and these 'economic activists' of town and country also fed into the stratification system, and into political institutions..... Although they have been boxed in many ways since 1967, the very existence of these various privileged elements remains a significant conditioning factor upon the pace of Socialist advance."40

Notwithstanding the different ideological and economic routes of development currently pursued by the East African Governments, the foregoing discussion reveals that private ownership of land creates a number of problems when it comes to plan and develop it for the common good of the nation. Further, it shows that many of the advantages hitherto attributed to private ownership have lost their validity to-day. Perhaps only two of the advantages continue to be supported by valid reasons. These are that private ownership gives a sense of security of tenure and therefore is an incentive to the owners to develop the land. The other is that private ownership enables the owners of the land to obtain the necessary funds and loans for urban development. With regard to the obtaining of loans it can be argued that the introduction of nationalisation measures for building societies, banks and other financial institutions in East Africa have meant that investors and developers have to deal directly with the Government and its agencies rather than with private land owners and proprietors. Further, the fact that urban planning and a greater part of development continue to be the responsibilities of the Governments, local authorities and parastatal bodies and that these are financed largely from public funds makes the case for private ownership of land less convincing than that of public ownership.⁴¹

Until the nationalization measures in both Tanzania and Uganda,

the major financial institutions with sufficient funds to raise loans for urban development were either foreign based or owned and controlled by non-nationals of the two respective countries.⁴² To a great extent this is still true of Kenya to-day. Among the factors determining the level of investment in these institutions is the political stability of the region which might have no connection with the type of ownership in which land is held. The East African laws have for a considerable period of time prohibited the transfer of land held by or on behalf of the Africans to non-Africans or companies designated as non - African without the consent of relevant ministers. This has meant that non - African money-lenders and building societies have been reluctant to give loans to African land owners on the basis of the land as security since they can neither take possession of the land nor foreclose any mortgages without the consent, which consent may not be given.⁴² It may be deduced from this state of affairs that the argument for private ownership of land for the purposes of obtaining capital for urban development is illusory. This point is clearly illustrated by the case of Motibai Manji v. Khursid Begum.⁴³ An agreement had been entered into by the appellant to transfer to the appellant her absolute ownership "in one undivided moiety of the land and buildings known as Plot 78, South Street, Kampala" in exchange for the transfer by the appellant to the respondent "free from incumbrances of her absolute ownership in the moiety of the land and buildings thereon known as Bunamwaya Estate." The South Street property was held on Crown land by way of lease and was valued at 75,000 shillings. The Bunamwaya Estate was also a lease valued at 70,000 shillings and the appellant had agreed to pay 5,000 shillings to balance the exchange. Although both parties to the exchange agreement were Asians, the second lease was of Mailo land owned by an African. The claim for specific

performance of the agreement was dismissed on the ground that the agreement contravened the provisions of S. 2. of the Land Transfer Ordinance in that it was made without the consent of the Governor in writing and was therefore unlawful and void. It may be contended that the decision was a harsh one since the transaction involved non - African parties and was based on an apparently valid lease and did not affect the reversionary interest of the mailo land owner. However, there was no doubt that this was the correct interpretation of the relevant provision and in delivering the judgment the judge considered "the protection of Africans from possible fraud" and the control of the sale of mailo land to non - Africans as a matter of public policy. Thus, Kampala lost a prospective developer of plot 78 notwithstanding that the properties involved were in private ownership.

One author has described another possible advantage of private land especially in the peri-urban areas in terms of housing.⁴⁴ He argues that at present both the Governments and local authorities lack the necessary funds and personnel to cope with the urban population increase taking place in East Africa. On the other hand, the private owners of land in these areas are able to construct unplanned residential structures to let to the homeless at rents they can afford whereas if they had to obey the rigid planning and development standards and regulations such structures would be impossible to put up and the homeless would remain shelterless since it is not feasible that the Governments would find the money and staff to construct their own houses. In other words, as long as there are people waiting to be housed and as long as there is no money to build decent houses it is only fair that private land owners should be encouraged to develop alternative accommodation. While accepting the validity and reasoning of this argument the policy behind it can only be

a short-term affair. Inherent in the argument is the danger that a Government accepting it may not attempt to seek remedial measures as a matter of urgency and any prolongation of the search leads to the worsening of the situation. For these reasons it is proposed that public ownership of land might prove to be a better form for urban planning and development. Moreover, if properly instituted and administered it can produce those same advantages supposed to be consequential upon the concept and acceptance of private ownership.

PUBLIC OWNERSHIP:

Professor Apthorpe has observed that in considering land legislation and reform a disproportionate emphasis is often put on land "ownership". He contends that no study of land in Africa can afford to neglect the extent to which questions of ownership are distinct from those both of use and occupation, and those of disposal and acquisition. He goes on to state,

"Most people do not treat land transfer for instance on the same plane as land ownership, except in special circumstances. Changes in the form of the considerations for which land may exchange hands (a) do not necessarily interpenetrate with changes in ownership rights and (b) do not necessarily signify some major social change in and of themselves with regard even to the incidence and frequency of the various types of land transactions."⁴⁵

In addition, it may be conceded that public ownership per se does not solve all the other problems which have been discussed under private ownership. It may simplify the procedural rules for the acquisition and development of the land but does not, by itself, lead to the availability of funds and personnel needed for planning and development. The overriding argument in favour of public ownership is that it makes it easier to minimise and control problems connected with development planning as opposed to the situation when the system is operated under private ownership.

Pogucki has directed attention to the reasons which should justify new land legislation in the countries of Africa.⁴⁶ He advocates the enactment of legislation which will facilitate assistance to persons who broadly speaking belong to lower-salaried income groups and to persons who do not possess

dwellings of their own. It should also be aimed at preventing land speculation by closing loopholes in dealings between private individuals in undeveloped land. It should foster development by reducing costs of installation of infra-structural services. Lastly, it should include specific measures in respect of rates or municipal taxes which are levied on the basis of occupation, possession or ownership of land and measures designed to prevent unplanned development, particularly of the peri-urban areas.

In discussing public ownership of land in East Africa a number of factors need to be noted. The overwhelming majority of the people live and work on the land and are likely to continue doing so for the foreseeable future. Secondly, urban centres are growing very rapidly and so far it remains doubtful whether there are any effective measures that could be taken to halt this growth. Thirdly, the economic and environmental development of the region will demand greater participation and contribution on the part of the inhabitants. Lastly, present social and economic policies, whether urban or rural, suggest that there should be greater control over land ownership, use and development than has hitherto been exercised. The institution of public ownership of land is not incompatible with any of the four factors. Indeed, the examination of the land policies in East Africa would seem to suggest that implementation thereof might be best achieved under the system of public ownership. Tanzania has chosen state ownership of land in preference to private ownership. The rationality of this choice is based on the socialist ideology of Tanzania and a preference for a return to what President Nyerere called the traditional African attitude to land. It may be necessary to examine the Tanzanian reasons for public ownership to discover whether they would justify the

adoption of the same system in Kenya and Uganda notwithstanding the apparent differences that exist between the economic and social policies pursued in the three countries.

Writing in Ujamaa: The Basis of African Socialism", President Nyerere stated,

"And in rejecting the capitalist attitude of mind which colonialism brought into Africa, we must reject also the capitalist methods which go with it. One of these is the individual ownership of land. To us in Africa, land was always recognised as belonging to the community. Each individual within our society had a right to the use of land, because otherwise he could not earn his living, and one cannot have the right to life without also having the right to some means of maintaining life. But the African's right to land was simply the right to use it; he had no other right to it, nor did it occur to him to try and claim one The T.A.N.U. government must go back to the traditional African custom of land holding. That is to say, a member of society will be entitled to a piece of land on condition that he uses it. Unconditional or "freehold" ownership of land which leads to speculation and parasitism (landlordism) must be abolished."47

Nyerere's statement may have been used to legitimise the establishment of state ownership of land in that it was politically expedient to condemn freehold as a colonial legacy and to prefer some form that was 'truly' African but it did not reflect accurately the traditional land tenure. It was a generalization because communal ownership was not a universal phenomenon in Africa.⁴⁸ We have noted that there existed communities in East Africa where the notion of individual holding of land was an acknowledged fact. Admittedly, these communities were few and far between nonetheless they cannot be ignored in the consideration of land reform. Secondly, it has been observed that the policies of the colonial administrations resulted in the land becoming a marketable commodity. People

began to demand the right to private ownership of land with a view to developing and using it on a commercial basis. It is by no means certain that the individuals who came to benefit under the colonial system of private ownership would welcome a return to communal tenure or indeed condemn the colonial legacy under which they appear to be gaining financial rewards. Thirdly, the 'uses' to which land was put under the traditional custom are not the same 'uses' that the T.A.N.U.⁴⁹ government would be advocating. The traditional African used his piece of land for shelter, grazing and subsistence cultivation whereas the modern government hopes for some sort of intensive farming for the economic advancement of the Tanzanian Republic as a whole. The traditional customs did not contain any penal or enforcement measures against the landholder who simply occupied it without actually developing it. The Tanzanian new land legislation contains penal and enforcement provisions to ensure that the land is occupied, used and developed in accordance with the economic policies of the nation - a nation that did not exist prior to the colonial administration. The new law establishes co-operatives, Ujamaa villages and produce market boards, all unknown under customary law. And as McAuslan has rightly noted "land use legislation is not a particularly socialist or African phenomenon."⁵⁰ The importance of the statement is that it can be used politically to 'sell' the idea of public ownership of land to the masses who are usually deemed to welcome a return to the traditions and methods of their forefathers. Thus, the Governments of Kenya and Uganda which have found land policies to be politically sensitive issues may find the Tanzanian form of campaign for state ownership a useful one to adopt.

The reasons for choosing state ownership in Tanzania are to be found in the socialist ideology inherent in Nyerere's writings and Tanu's policy

documents like the Arusha Declaration.⁵¹ It is a consequence of that Government's commitment to the needs of the people, the creation of an economic strength for the advancement of the country and the desire to create justice and equality among the citizens. The examination of the land policies of Kenya and Uganda shows that the Governments there aim at the same objectives. Kenya's land policies can be discovered in such documents as Sessional Paper No.10, "African Socialism and Its Application of African Socialism to Kenya," the current Five Year Development Plan, and the recent sessional Paper commenting on the ILO Report on employment, incomes, and equality in Kenya.⁵² Sessional Paper No.10, contains, inter alia, three general statements, namely, (1) Emphasis will be given to the development of agriculture in former African areas through land consolidation, registration of titles, development loans, co-operatives and extension service, (3) Land Management Legislation, including punitive measures against those who mismanage farms, misuse loans, default on loans, refuse to join major co-operative farming schemes, where these are necessary, or oppose land consolidation which will be introduced and strictly enforced, and (5) the organisation and functions of marketing boards will be re-examined with a view to consolidating their activities and modifying their functions to promote the welfare of the consumers as well as producers. Since the publication of the paper in 1965, Kenya's Five Year Development Plans and subsequent land legislation have attempted to implement the objectives implied therein. The attempts have not always succeeded partly because of lack of personnel and finance but partly also because of vested interests in private land.⁵³ In the latest sessional paper, the Government has indicated a policy of "continued rapid expansion of the economy, a wider sharing of the benefits of expansion, national integration of the economy and an attack on the

imbalances and disparities of the economy." In addition, the Government will aim at more efficient use of land and a changeover from subsistence to commercial farming. It has also promised to allocate its resources in such a way that by 1980 everyone will be either employed or have some land.⁵⁴

The objectives in the Uganda policies have not been any different from those observed in Kenya or Tanzania. Beginning with the Common Man's charter 1969,⁵⁵ to the present the Uganda Governments have declared their intention to effect radical changes of land tenure so as to increase economic production, bring about equitable distribution of the economic benefits and to abolish or minimise the incidents of private land holding which tend to hinder the realisation of these objectives. Thus, before its removal from office by a military coup d'état the civilian Government had undertaken to move to the left strategy by affirming that the guiding economic principle would be "that the means of production and distribution must be in the hands of the people as a whole. The fulfilment of this principle may involve nationalization of enterprises privately owned.... No citizen or person in private enterprise should entertain the idea that the Government of Uganda cannot, whenever it is desirable in the interests of the people, nationalise any or all privately owned enterprises, mailo and freehold land and all productive assets of property, at any time, for the benefit of the people. The Party therefore directs the Government to work along these lines"⁵⁶ The conviction of the Government about public ownership was not pursued vigorously when it came to enacting the Public Lands Act of 1969. The explanation was that it would have been politically inexpedient to abolish private land at this time especially mailo land.

Thus, although objectives in land policies have continued to be fairly uniform throughout East Africa land legislation has tended to be

diversified. Part of the explanation is inherent in the previous discussion relating to the historical and political situations that have prevailed in both Kenya and Uganda. More importantly however, the two countries have lacked a national ideology or ethos of development. Ministers and political leaders were and continue to be private land owners themselves and their public pronouncements about socialism and moves to the left have not always been accompanied by self-sacrifices.⁵⁷ This was one of the main reasons why Tanzania found it necessary to establish a leadership code for its ministers, civil servants, and political leaders. In spite of the general objectives, both Kenya and Uganda have followed systems of mixed economies under which public and private enterprises are encouraged to contribute to economic development with private enterprise consisting partly of private land. Commenting on this mixed economy, Colin Leys states,

"The commitment accepted by the Kenya Government to maintain the structure of the colonial economy largely intact, and to pursue economic policies in collaboration with foreign private capital and foreign capitalist governments, with private property and the profits motive as the key institution and the prime mover in social and economic change. This commitment was sealed between 1960 and 1962 when the leaders of the nationalist movement, accepted the principle of the sanctity of private property rights and agreed to pay for the land taken for the settlement schemes in the White Lands. The Origins of the commitment lie farther back in Kenya's colonial history, in policies which had broken down the pre-dominance of communal and exchange relations and led to the emergence of a protean but essentially individualistic peasant economy and society, oriented to urban markets, wage labour and cash relationships. The nationalist leaders who accepted the transfer of power on the basis of maintaining the capitalist economy substantially intact were the product of this experience, and of the school system which facilitated it. The major theme of economic policy within the framework of this commitment had to be a

maximum rate of inflow of foreign capital, balanced by the most rapid possible extension of African participation in capital ownership and management."⁵⁸

The extract has been cited because it reflects accurately the transformation of traditional attitudes to land and property which occurred before independence. It underlines the problems faced by post-independence governments when introducing and implementing socialist policies or policies intended to benefit the community as a whole. It implies that more than legislation reform may be needed to educate the people to the advantages of new policies. For instance, the Uganda strategy plan of 1969 stated that economic development would be planned in such a way that the Government, through parastatal bodies, the co-operative movements, private companies, individuals..... would effectively contribute to increased production to raise the standard of living in Uganda and would guarantee protection of foreign investments which were necessary for economic expansion.⁵⁹ One of the reasons given by the military Government for taking over power was that the civilian regime had failed to implement the objectives of the strategy plan.⁶⁰ However, since publishing this reason, the military government has compulsorily taken over land and property owned by foreign investors and instead of managing the property for the general benefit of the nation most of it has been distributed to a few "deserving" Ugandans who have simply replaced the dispossessed foreigners to create a privileged class of Ugandans.⁶¹

It has been contended by some people that it does not make any difference whether land is in public or private ownership, that what matters is whether the use, development and distribution of the land are effectively controlled.⁶² It is submitted that this contention is not supported by the facts and circumstances which have been described. Further, it is argued that the envisaged control is likely to be more effective when the land is in public ownership. The Tanzanian experience has

indicated that state ownership solves or at least minimises a number of the problems which are results of private ownership. These include speculations in land, rigid rules of procedure for acquisition and compensation and the high prices of land purchase. Thus, writing about "Urban Development Policies and Planning Experience - Tanzania", Mkama has observed that state ownership has enabled "the Government to revolve any title on land which was lying idle and give it to other interested developers. This law has not only got rid of vested interests in land, but it has also removed land speculation which tends to be associated with rapid urbanization."⁶³

Because the planning and development of urban areas are related to the development of rural areas it is proposed that all land should be placed in public ownership.⁶⁴ Present freeholds and mailo land in both Kenya and Uganda should be converted into leases of certain durations depending on whether the land is occupied or not and whether it is developed or undeveloped. No compensation should be payable for mere ownership, occupation or possession of land unless the proprietors can prove that in being dispossessed they have lost some tangible right or interest expressible in terms of money or alternative land. Public ownership of the land in and around urban centres should be considered as a matter of priority because certain aspects of urban development such as service facilities, open spaces, recreational grounds, health regulations and street layouts do not depend on the security of tenure of the individual owner or on his ability to obtain loans for development. It is also argued that the creation of public ownership of land is unlikely to affect the present social and economic policies in Kenya and Uganda.⁶⁵ Freehold and Mailo land will be converted into Public Land which is already

governed by special legislation.⁶⁶ It will be converted in such a way so as not to affect the existing rights of occupation, user and development except in so far as duration of the same is concerned. Thereafter, the land will be occupied, developed and sold in accordance with the existing rules and regulations that apply to public lands. Occupiers of the newly created leaseholds will be obliged to register their new interests. This should be after the necessary land surveys have been undertaken to ensure that each parcel of land and the owner thereof can be identified and registered. The covenants and regulations which apply to public land will apply to the new leaseholds with regard to acquisition, transfer and sale of interests in the leaseholds and will be enforceable against those who had previously held freehold and mailo land, respectively. The fear that such conversion is likely to lead to political unrest in the areas affected or reduce economic development may be unfounded. When Tanzania converted all the land to state ownership no such consequences occurred. On the contrary, the measure has tended to unite the Republic by abolishing the distinction between land owners and the landless. Moreover, since the conversion, there is evidence that the economic progress of Tanzania has grown steadily and more importantly, on a relatively national uniformity.⁶⁷ Kenya, has been able through political action, legislation and international assistance, to take over masses of land previously held by white settlers and to distribute the same amongst many of her citizens who did not own enough land.⁶⁸ Kenya could have taken the opportunity of the scheme to declare such acquired land public lands and instead of creating individual holdings, granted leaseholds to her citizens.⁶⁹ However, because of what has been said the Government preferred individual holdings instead. It has also been noted that the scheme of transferring big parcels of land

previously held by few to so many to hold in subdivisions has been an economic advantage in that contrary to previous anticipation, the land has yielded more and not less produce for the economy of Kenya. There is no evidence that had the land been converted into leasehold the Kenyans could not have taken occupation or indeed developed it as they have.

When the Uganda Public Lands Act of 1969 was enacted, all the lands previously held as communal land and all rights and interests under customary tenure outside Buganda and excluding freehold were automatically converted into public lands. In Buganda, the former official estates were similarly converted. There was no compensation offered but the existing occupiers were given an option to apply to the Land Commission to grant them titles of leasehold in the parcels of land they held. By 1973, very few of the occupiers had made any applications.⁷⁰ The rest of the people have continued to occupy and use the land as they have always done in the past. However, this time, the ownership, occupation, use and development of 'their' land is subject to the rules and regulations which govern public land.⁷¹ The Government, local authorities and the Land Commission have acquired more powers of control in respect of these lands and they may not be sold, transferred or developed in any manner other than authorised without reference to any of these public bodies. With the coming into force of the Act land sales and deals became controllable and land prices fell sharply. The law has also tended to reduce land litigation which was particularly evident in the most populated areas of the towns and the districts of Kigezi and Bugisu and Bukedi.⁷²

It is proposed that when public ownership of land is established, there should be specific provisions made for the prohibition of subdivision or fragmentation of land below a certain minimum acreage of

land. Further, no land sales or transfers should be allowed without notice being given to the controlling authority. The provisions will ensure that land is kept in reasonable amounts of area for planning and development purposes and that all the tenants and sub-tenants are known before hand and can be registered. It is suggested that the scheme will minimise litigation over such questions as who owns or occupies the land and the boundaries of the various land holdings. It is to be appreciated that much of the land in the peri-urban centres and the densely populated districts is already fragmented and owned or occupied by a large and sometimes unascertained number of people. This state of affairs does not in any way affect the proposal to declare such lands to be in public ownership even though the system of ascertaining the owners and occupiers and determining their rights and interests therein might prove problematical. As long as the Government or other public authorities have no plans to develop these lands, the occupiers should continue their present occupation subject to the controls and regulations imposed upon occupiers of public lands. Whenever an occupier wishes to sell his interest or abandon his occupation, the land should revert to the controlling authority with the power to retain, regrant or sell the lease as they deem fit. In doing so regard should be had to the consolidation and future development planning of the area as a whole.

COMPENSATION RE-EXAMINED

Acquisition and compensation were examined in the previous chapter. A number of suggestions were made for simplifying the procedure for the acquisition of land and making it more meaningful to the persons affected.⁷³ One of the reasons for the complicated procedure for acquiring private land was said to be the unascertained number of owners, occupiers and users of the land particularly where the land has been greatly fragmented. If the proposed form of public ownership were to be established it will at least minimise, if not eliminate altogether these two problems. Simple procedure for acquiring the land is likely to speed up the planning process and to cost less in the sense that the expenses involved will be reduced. In converting private land to public land, a transitional period should be allowed for determining the value of the interests for which compensation is payable. The period is to cater for private owners and occupiers who might have bought or acquired the land within the transitional period and had to pay part of the purchase or acquiring price for the mere ownership of land.⁷⁴ The law should be drafted in such a way that where the new leaseholder sells his interest or parts with it under an order of compulsory acquisition for a public purpose, the price of sale or amount of compensation, as the case may be, should include the assessment of ownership as part of the consideration where the occupier actually paid for it. Ownership will be paid for only when the occupier can prove that he acquired the land within a specified period prior to the coming into force of the conversion legislation and that the price he paid for it covered the value of ownership whether of freehold, mailo land or leasehold. Valuers would be able to ascertain the amount by

examining the market values of the land at the time the occupier acquired it. In effect, this would be the difference between the total sum paid and the amounts allowed for the unexpired developments on the land such as houses, other buildings, crops and trees. Should the valuers be satisfied that the developments on the land were such that the occupier should be deemed to have realised the value of such ownership during the transitional period they would be able to recommend that no compensation should be allowed for the ownership. The owner would have a right of appeal against such findings and recommendation.

The difficulty may arise when it comes to determining a transitional period which is most appropriate. It has been estimated in East Africa that when land is acquired and developed as a residential area for commercial purposes, the investment yields more than the capital expended within a period of five years.⁷⁵ This apparently applies to what is known as standard housing since sub-standard houses and those which are less than sub-standard usually take shorter periods to produce the same rate of returns. Normally the latter are overcrowded with tenants who pay considerably more rent collectively than single or fewer tenants of the standard houses. Other developments such as factories, offices to let and ginneries are estimated to take as long as eight or ten years before producing comparable profits for the developers.⁷⁶ It is therefore proposed that the transitional period should be five or ten years, depending on the type of development found on the land, from the time the conversion legislation comes into force. The transitional period should be used as follows:- If, for example, a proprietor of residential land were to sell his land on the day that the conversion legislation came into force - which day may, for convenience be called the relevant date - and it could be shown that he either acquired the land more than five years previously or that

he could not prove that he had acquired it within the five years preceding, he would not be entitled to claim any price for mere ownership. On the other hand, if he could show that he acquired the land within the stipulated period he would be entitled to claim the price of ownership. Similarly, anyone selling residential land after the relevant date would have to show that he acquired it before that date and that it is not five years yet since that acquisition.

From the above proposal it can be deduced that by the end of the five or ten year transitional period or from the relevant date no compensation for the ownership of land per se would be possible. The idea then is to remove entitlement to compensation from the ownership of land to the unexpired developments in it.

It is also suggested that there should be an independent authority to deal with compensation matters. It should determine the amount of compensation that should be payable for certain interests in land, administer the compensation funds and resolve the difference between the planning authority and the interested parties where both have failed to agree to the amount payable through negotiations. This would avoid the situation described in the Allen Commission Report where a number of maladministrations were examined.⁷⁷ The Commission heard numerous complaints of compensation having been wrongly paid to illegal squatters and of failure to pay compensation to persons who were legally entitled to receive it. It was discovered by the Commission that only one person assessed the land and buildings for compensation and that the system used was improper. The Officer concerned explained that if a person did not agree with the assessment made he could appeal either direct to the Town Clerk or to the Minister. However, the Public Land(Compensation for Resumption)

Act, 1965, stated clearly that any dispute resulting from such assessment should be taken to the Town Clerk who was obliged to refer the matter to court.⁷⁸ Thus, there had been a resort to the wrong procedure. It was also alleged that the City Treasurer paid large sums in cash to the Town Clerk for payment to individuals of the public as compensation for their land and property compulsorily acquired by the council but apparently this money had not reached the people entitled. The Commission found that there had been considerable delays in paying some of this money. In one case a sum of shs.31,000 was paid to the Town Clerk for this purpose and for some unknown reason he retained it for seven months before paying it out and quite naturally this raised suspicion with regard to its use during those seven months. In a number of cases the City Treasurer was told that a number of people were entitled to compensation and had been evicted from their lands and property. He would then pay the money to the Town Clerk but subsequently it would transpire that the people had not been evicted after all or that they had been allowed to stay on the land, in some cases, for twelve months. The Commission found that much of this was caused by the Town Clerk's carelessness, negligence and partiality to his friends. The Allen Commission criticised the practice whereby the Town Clerk is personally responsible for the actual payment of compensation to interested parties. They recommended the appointment of a Committee to deal with all outstanding claims for compensation. There is argument for saying that such a committee ought to be independent of the City Council and of the residents who are likely to claim compensation for the compulsory acquisition of their land. Council members are usually local people who may have land and property in the area. They and the local residents are unlikely to act impartially particularly when it may be

their land or that of friends and constituents which is affected.⁷⁹

It is proposed that there should be established an independent Committee to be known as the compensation committee which should be a sub-committee of the Land Tribunal which is to be proposed later.⁸⁰ The Committee should be presided over by a local magistrate who is legally qualified. Its membership should include the Legal Adviser to the Council, a member of the Town Planning Department, two independent planners in private practice and three representatives of the urban community. Negotiations for compensation between the acquiring authority and the interested parties shall continue to be the responsibility of the parties and any compensation payment agreed will be notified to the Committee which should administer the funds for compensation and make individual payments to the interested parties. In the event of any disagreement between the parties as to the amount payable an appeal should lie to the compensation committee with a further right of appeal to a judge of the High Court who may be assisted by two planning experts of his choice as assessors.

It is also recommended that the compensation committee should take over the function of reassessing and reviewing the compensation Price List⁸¹ but that in this capacity the composition of the committee should be re-constituted so as to include council members as chairman and three representatives to replace the magistrate and the three members of the public. This is to ensure that the values of the land and property in the planning area are determined by the elected or nominated representatives of the community.

One of the complaints often made in East Africa is that compensation Price Lists are usually out of date.⁸² Hitherto each planning area has had an area committee whose duty it is to reassess and review compensation price lists. In most cases the Committees have not been functioning

properly or regularly with the result that those lists have remained unchanged for ten or more years inspite of the fact that the value of land and property has increased from year to year. The Committee consists of Councillors even though it obtains professional advice from the officials of the planning area and its assessment and review is subject to the approval of the Minister. However, there is no statutory power to force the committee to carry out this function at regular intervals and, in any event, the way in which we have described the structure and working of local authorities has not been conducive to the advancement of this function. The proposed committee would have the necessary qualifications and competence to reassess and review the lists. In addition, there should be a provision in the new law to compel them to do so within specified periods of time. In spite of the changing economic conditions in East Africa, a period of five years is suggested as the most convenient and practical. First, it has been proposed that the transitional period in which compensation for mere ownership should cease should be at least five years. Secondly, in most cases, planning proposals are calculated on the basis of the national development plans which are usually for a duration of five years. Thirdly, planning authorities would have sufficient time within which to begin implementation of their planning schemes and projects without fear that reassessment of compensation payments may increase their expenses at any time and therefore diminish the financial resources required for such implementation. Fourthly, the planning authorities are statutorily obliged to take possession of and begin developing the land acquired compulsorily within five years.⁸³ The period in which the interested parties may claim compensation is one year. Thus, the planning authority would have ample time within which not only to find the necessary funds for compensation but also within which to

plan for implementation without having to deal with the interested parties.

The next point to consider is the principle on which the interests to be compensated are to be determined. The general principle advanced so far is that an owner or user of land should have the right to secure a money payment not less than the loss imposed on him in the public interest but on the other hand not greater. It is for this reason, among others, that compensation for mere ownership or occupational rights is rejected except for the transitional period. Although the principle of market value should be adhered to there may be occasions on which that value is quite insufficient to enable the dispossessed owner or occupier to purchase comparative property elsewhere. Accordingly, it is recommended that in determining the value of compensation the principle of equivalent reinstatement should be vigorously supported. In the absence of agreement between the parties the compensation committee should be able in its discretion to award compensation on the basis of equivalent reinstatement.

In 1972 the report⁸⁴ accompanying the Kampala Master Plan stated that the following principles should be applied in determining compensation:-

1. No allowance should be made for the fact that acquisition is compulsory.
2. The value should be for the existing use only. No allowance should be made for the development value of the site attributable to either the presence or absence of planning proposals. This is justified as the development value is created by the public at large and not by the individual owner.
3. Value attributable to illegal buildings or illegal use of land should be ignored.
4. The increase in value caused by planning proposals to the remainder of a landowner's land should be deducted from the compensation payable on the land taken.
5. If subject to change, the existing use value should be that on the day of the publication of the planning proposal affecting the land.

6. The planning authority should take the land shown for compulsory acquisition within 5 years of the publication of the detailed plan for the area. After that period the land owner may challenge the scheme in the courts and have his land released from designation.
7. No compensation should be claimable by landowners who feel that their land is adversely affected by planning proposals unless the land is designated in a detailed plan as subject to compulsory acquisition.

The compilers of the report saw the objects of these recommendations as to discourage land speculation at government expense or not to depress the land market and cause widespread dissatisfaction by being totally inadequate. A number of points arise from these recommendations. The Urban Authorities Act of 1964 and similar legislation would have to be amended to conform with the spirit of the proposals. The former Act provides, *inter alia*, that

- "S.40 (1) Any person who is the owner of any land which is injuriously affected by the execution of any works shall, if he makes a claim within one year of the date of completion of such works, be entitled to recover as compensation from the council executing such works the amount by which the value of such land has been diminished or the amount of any damage suffered by such owner not amounting to a diminution in value:
- (2) Where by the execution of any works mentioned in subsection (1) of this section, any land affected by such works is increased in value, the council may, within one year of the date of completion of such works, recover from the owner of such land the amount of such increase."85

The recommendations do not deal with the situation where a landowner or user may not have had his land compulsorily acquired but because of the proximity of the planning schemes and projects proposed to his land his developments or use of the land is adversely affected. It is only fair that if the

Council is to claim the increase in value of the neighbouring land the owner of such land should claim compensation for the loss in value caused by development proposals in the neighbouring land.

It is questionable whether the recommendation that people who develop land illegally or who are squatters on public land should not be compensated is a just one. Although squatting and unauthorised development has been identified with overcrowding, squalor, poverty and slum conditions, in many instances the situation is misunderstood. A squatter has been described as a person who, being unable to find accommodation in the accepted and legal way, appropriates a portion of land, usually owned by the state or local authority, for the purpose of building himself a home. He need not necessarily be poor or workless. In many squatter communities, normal, industrious, law-abiding and even wealthy individuals can be found.⁸⁶ Some people have made the argument that squatting is a necessary development of urbanization and the people who squat have a positive role to play in the urban areas.⁸⁷ For instance, they provide cheap accommodation to a large portion of the urban working population which might otherwise be shelterless. Moreover, these people proceed with their unplanned development in the full awareness of local authorities. It is therefore unjust that they should be deprived of their property and interest in land without fair compensation. While it is conceded that the value of their compensation should be less than that payable to persons who have legal occupation, nevertheless they should be entitled to some compensation. It is proposed that unless the squatter was given notice at the time he started his illegal development he should, like any other law-abiding citizen, be entitled to compensation. In cases, where the squatter has been on the land for less than one year, he should not be entitled to compensation beyond the value of the materials actually brought by him onto the land. Where he has lived on the land for more than a year

but less than five years, the compensation for unexpired improvements should be nominal and where he has exceeded five years, he should be treated just like any other legitimate landowner or occupier. The onus of proving that the squatter had been given notice should be on the local authority disclaiming liability for compensation. It is our view that the rule that such persons will succeed only if they can prove that they are protected by the operation of the Limitations Act which puts the period of protection beyond twelve years is unfair in the volatile communities of East Africa.⁸⁸

Lastly, the question whether a landowner or occupier who is refused planning permission should be entitled to compensation may be discussed. Under the English Law, compensation is not only payable for the compulsory purchase of land but also for planning restrictions which either prevent or hamper the development of land or cause loss or damage or depreciation in the value of the land. Although the law which deals with this aspect of planning in England is complicated and detailed and it is not proposed to examine it fully here, the relevant statutes divide developments and uses in land into two categories.⁸⁹ The first category consists of developments and uses for which the owner or developer can claim compensation for being refused planning permission or on being restricted to utilise the

development or use. The second category consists of those for which no compensation is paid in spite of the planning restrictions or refusal of planning permission. For example, under the Town and Country Planning Act 1971, Part VII of the Act deals with new developments for which compensation is payable for planning restrictions and Part VIII of the Act deals with other developments for which compensation is payable. Schedule 8 of the Act gives various examples of development falling within the existing use of land and in respect of which special compensation rights attach.

In East Africa any new development to be undertaken by the owner or

developer requires planning permission if it to be undertaken within a planning area which is subject to control.⁹⁰ A new development is generally defined as the carrying out of operations in, on, over or under the land, or the making of a material change in the use of land. None of the East African planning laws provide for the compensation of a person who is refused such planning permission. A number of reasons may be advanced for this omission in the East African law. Because there have been relatively few private developers in the East African urban centres, the occasion has not risen for the existence of so many disappointed would-be-developers to justify such a provision. On the contrary, Governments and local authorities have often complained about the lack of owners and developers who are willing to come forward and apply for planning permission.⁹¹ Indeed, in the majority of cases it has been public authorities encouraging and persuading individual owners and developers to invest into urban centres by carrying out new developments. An analysis of cases both before and after independence reveals that the overwhelming number of applicants were given planning permission and the few whose applications were rejected were given grounds which did not justify compensation.⁹² Such grounds included lack of capital on the part of some applicants showing that they would not have developed the land in any event even if planning permission had been granted and the fact that the applications were in respect of zones in which such new development or change of use would have been unauthorised by law. There is also the fact that most planning areas in East Africa can still claim to possess more land to cater for any possible new development that may be proposed by private citizens. Therefore, it is always easy for the planning authority to exchange the land for which permission has been refused with some other suitable land within its area.

There may be instances when the refusal to grant permission or the imposition of planning restrictions creates injustice in respect of the applicant or land occupier.⁹³ However, in view of what has been said the remedy should not lie in compensation but in other methods. It is suggested that the law should be reformed in such a way that the applicant who is refused a planning permission or who is confronted with planning restrictions should have a right of appeal to the Minister. Further, it should be obligatory on the Minister to order a public enquiry to determine whether or not the planning permission should be granted and the Minister should only determine the appeal on the findings of the public enquiry.⁹⁴ As an alternative, the land owner who is refused planning permission or who finds that the planning restrictions imposed have made his land incapable of reasonably beneficial use should be entitled to serve a purchase notice on the planning authority. In this case, his land and property or interests would be compensated as if the land had been compulsorily acquired by the local authority. Should the planning authority refuse to purchase his interests, the applicant would be entitled to a right of appeal to the proposed Compensation Committee and a further right of appeal would lie to the Minister with the power to grant the planning permission originally applied for. Unlike the appeal from the Compensation Committee which goes to a judge of the High Court in respect of disagreement about the amount of compensation, planning applications and purchase notices involve matters of policy and should therefore go to the Minister on final appeal.⁹⁵ In considering compensation issues it must be appreciated that East Africa lacks the necessary financial resources required for development. Consequently, it is proposed that every effort should be made to encourage dispossessed persons to accept alternative and comparable lands, with, if need be, sums of money to balance out the exchanges and to pay removal expenses

as well as disturbance allowances. It should be only when this kind of compensation is unsuitable to the interested party or when it leads to manifest injustice that compensation in the form of money should be considered as an alternative.⁹⁶

CHAPTER: . FIVE

SECTION I: THE ADMINISTRATIVE ORGANS OF URBAN CENTRES

INTRODUCTION

In discussing urban planning and development, it is not sufficient merely to examine the mechanics of the planning process and its consequences, for the question of who initiates, approves and implements general and specific policies is equally important.¹ Central and local authorities which are responsible for urban planning and development need to be considered. The structure, functions and powers of these organs are of great interest in the understanding of the subject, for many urban-development problems depend for solution on the efficiency and constructive collaboration among the several agencies of planning and development. It has been said that specialisation and integration are inseparable prerequisites of effective urban-development administration.² Of similar importance are the relationships between the different organs and officials, the co-ordination of their work and the evaluation of their effect on urban planning and development. Often the lack of feasible policies or the non-implementation of those in existence may depend on the way these organs are structured and the manner in which their officials function and sometimes on lack of co-ordination and personnel.

In East Africa urban development projects must be considered in the context of the national economic plan which is usually initiated, directed and co-ordinated by the departments of the central Government.³ On the other hand, the initiation and formulation of urban development plans are the responsibility of local authorities, planning committees and in some cases parastatal bodies.⁴ Any plan is only important in so far as its approval and implementation can be guaranteed and the planning agencies

may be unlikely to proceed with their planning schemes unless they are assured that the proposals will be fulfilled. By and large, the bureaucratic machinery, particularly in the field of planning and development continues to depend largely on expatriate staff.⁵ Moreover, a number of development projects currently being implemented in the region are directed and administered by persons employed through aid programmes. Consequently, a discussion of the administrative structures in East Africa would be incomplete without examining the role and influence of expatriate personnel who may not be provided for in the specific laws of East Africa, but whose practical presence may have far-reaching consequences.

It is also to be appreciated that while many of the organs involved in the planning and development process are purely administrative and professional there are others which are mainly political. It is thus of great benefit to understand the relationship between these two sets of organs and to discover the influence one has over the other, particularly as the latter often possess the ultimate power of decision. A recent comparative study of the planning process has revealed that,

"Public officials and political leaders often dominate public-service decision-making.... organised groups react to government actions that affect them more frequently than they generate pressures for specific policies and programs. Communal groups, such as religions and ethnic blocks, generate symbolic and representative demands, - for example, for representation in the bureaucracy - more frequently than instrumental policy demands. Business elites seek favours from the bureaucracy more commonly than they govern its behaviour (with some notable exceptions)⁶.

For these reasons, it is essential to study and analyse the structure and operation of the central and local authorities as well as the officials who advise them and implement their urban planning and development policies.

The understanding of the manner in which these organs function and the relationships between them becomes a necessary factor in the evaluation of present trends of urban planning and development and in the assessment of reformative proposals.

PART I: CENTRAL AUTHORITIES

THE NATIONAL PLANNING COMMISSION

In East Africa, urban planning and development is considered to be part and parcel of the national development plans. Therefore the examination of the relevant authorities must take into account those who are responsible for the national development plan. The basic policy currently advocated by the East African Governments has its general strategies ultimately approved by no lesser an authority than the Cabinet itself. The function of the Cabinet is said by the respective constitutions to be the formulation and implementation of Government policy.⁷ This function is more specifically exercised by the National Planning Commission which is a high-powered body representing the most important ministries that are directly concerned with physical and economic planning.⁸ Those include Ministries of Planning and Economic Development, Regional Administrations and Finance or their equivalent. The Commission is a committee of the Cabinet and is normally presided over by the Head of Government. Apart from the senior ministers who represent their respective Ministries, chief heads of Governmental departments are also invited to appear and advise the Commission. Prior to the approval of the national development plan by the Commission and the Cabinet, all Ministries and departments are requested to submit proposals for development and the financial estimates likely to be required for the implementation of the proposals. The proposals are examined and debated by the members of the Commission. Departments which are not represented on the Commission may be requested to send in representations.⁹ Proposals which are approved will be included in the national development plan. The plan is only in structure form and lays down general principles of guidelines and thereafter it is published and referred to as the Five-Year Development Plan. Consequently, individual Ministries are expected to

initiate and develop policy plans relating to their own fields but in accordance with the guidelines prescribed in the national development plan.

In the case of urban planning and development, the Ministry concerned is that of Regional Administrations.¹⁰ This is the terminology used in Uganda. In Kenya it is known as the ministry of Housing and Local Government, while in Tanzania it is designated as the Ministry of Lands, surveys and Urban Development. These terminologies are liable to change from time to time in the three countries and indeed they have often changed because the President has the power to designate ministries and to remove one departmental responsibility from one ministry to another. He may also divide a department and place its various functions under different Ministries.¹¹

THE MINISTER:

The most important organ of the Ministry is the Minister himself. He has the overall responsibility of securing consistency and continuity as well as control in the framing and execution of national policies with respect to the use, disposal and development of land.¹² In addition, he is empowered to make regulations, to hear certain appeals and to approve plans and schemes in relation to the planning and development of urban centres.¹³ There is almost no single statute relating to land, land use and planning and development in which there is no specific reference to the powers of the Minister.¹⁴ A number of examples may be given to illustrate the extensive powers of control vested in the Minister. Under the public land legislation,¹⁵ the Minister appoints members of Land Committees, gives the controlling authority of the land such directions as may be necessary for the exercise of its powers, gives his consent to certain dispositions in public land and may

refer any dispute under the legislation to the High Court. Under the Townships and Municipalities legislations,¹⁶ the minister is empowered to declare locations as towns or municipalities and to designate their boundaries; he may nominate members to their respective councils and may make rules for such matters as the imposition of rates, the procedure for assessing the rates and the collection and refund or remission of rates from premises in any township or municipality. In addition, he is empowered to make rules for such things as are necessary or desirable for the safety and well-being of the inhabitants or for the good rule and government of any or every township.¹⁷

Under the *Town and Country Planning legislation the Minister may* exercise wide powers.¹⁸ For example, he declares and specifies boundaries of planning areas on the recommendations of planning boards and local planning committees. He receives and approves specific plans and schemes prepared for planning areas. He hears and determines any representations made by persons who object to such plans and schemes. He may, as a result of such representation, modify or revoke any proposals in the plan or scheme, as the case may be. Lastly, under the Land Acquisition Act, the Minister is empowered to declare what land and interests therein are to be compulsorily acquired for a public purpose. He makes regulations for the acquisition and compensation of the land. But even when the land is not required immediately for a public purpose the minister may authorise any public officer to enter upon it and survey, dig, bore into the sub-soil, remove samples and do anything necessary in order to ascertain the suitability of the land for a public purpose. From the foregoing it can be said that the Minister's duties and powers include the making of regulations, the hearing of appeals, the giving of general and specific

directions and the approval of structure and specific plans as well as schemes.

In exercising these functions and powers the Minister is not always guided merely by the principles of planning and development. The Minister is the chief representative of the Government in his Ministry and he owes his position to the political structure of the country. It follows that politics cannot be divorced from planning and development.¹⁹ "In a democratic society", it has been said, "the will of the people must prevail and that will can only be expressed through the political medium in Parliament."²⁰ The physical planner must be guided by adequate political decisions made at both a national and a local level, and where such decisions are lacking the planner may find it impossible to function. He may initiate and formulate a plan but unless the Minister approves it nothing may be implemented. Hather has revealed a number of reports written and containing sound recommendations on which Government took no decisions because of their political implications.²¹ It may be said, for example, that the retention of mailo land in Uganda, the attitude of the Tanzanian Government to the Dar es Salaam current Master Plan prepared by a Canadian firm, and the Kenya policies towards the Highlands estates since independence, have been results of political considerations. In the case of Uganda there was the fanatical belief in the institution of mailo land tenure by the Baganda owners which the Government feared might have led to political unrest if the system was abolished. In Tanzania, the Arusha Declaration and subsequent socialist policies have emphasized regional and rural development and urban development has ceased to demand a first priority in Government policies. In respect of Kenya, McAuslan has observed that it is only comparatively recently that there has been a general acceptance of the

importance of land law from the point of view of economic development, rather than from the point of view of political power. "For much of Kenya's history, the land law implemented, or was characterised by the policy of segregation, the White Highlands and the Native Reserves with the Asians congregated mainly in the less-desirable parts of the urban centres. Inevitably this led to constant political warfare over the land both within and outside Kenya."²² Independence was demanded and fought for mainly because the Africans believed that the colonial set up had deprived them of the best arable lands in the colony. When independence was attained, the nationalist Government felt obliged to deliver the land to its supporters by an extensive system of sub-division even though many planners and economists advised that such a step would be harmful to the economy of the country. But even when the report of the experts is specifically commissioned by the Government the ultimate decision to adopt it will be taken at the political level. In 1964 the Kenya Government invited a United Nations mission to investigate and make recommendations on the housing policy of the country and when the report was submitted the Government's comment was that it has given careful consideration to the report and welcomed it as containing a useful approach to the housing problem facing the country on which a sound programme for development could be based. "However," the comment went on, "two years have passed since the mission conducted the survey and some of the data and premise on which its recommendations were based have since changed. Furthermore, the experience gained in prosecuting the housing programme since independence has brought to light some problems which were not identified by the mission during the survey." In the end the Government concluded that while reference would be made to a number of the significant recommendations in the report its own Sessional Paper on the subject would have to be taken as authoritative on the housing problems facing Kenya.²³

On the other hand, there have been important planning decisions taken by the East African Governments on the political level which no planner could have had a political mandate to take but which were essential for the proper and efficient process of planning and development. In this category may be mentioned the following:- The Uganda statutory Instrument no.135 of 1968 enabled the Government to acquire compulsorily such mailo land in private holding as is required for public purposes. Hitherto, the Government's powers were restricted by the provisions of the 1900 Agreement between the colonial power and the Buganda Kingdom under which the Government could only acquire ten per cent of any one private mailo land holding for a public purpose. The statutory instrument was at the time hailed by planners as a political decision of immense importance and as a historical land mark in planning. In Kenya, physical planning at national and regional levels is said to have started in 1966 when the Government directed that integrated socio-economic development plans should be prepared by the Town Planning Department of the Ministry of Lands and Settlement in co-operation with the Ministry of Economic Planning and Development. This was a decision that could only have been taken politically and at the highest level of Government. Similarly, when Tanzania decided to extinguish private land ownership in order to advance socialist principles in planning and development the decision had to be taken politically.²⁴

Apart from controlling and directing land use and development, the Minister is also concerned with the costs involved in providing the initial services. He is also concerned with whether legislative measures should be mandatory or permissive and how much of the planning powers should be delegated and to whom. All these questions need to be answered at the political level because planning and development are not an end in themselves; they must be related to the needs and aspirations of the people. Planning

must take into account the economic realities of the country and it is the Minister who is possessed of the political power to determine these factors. It has been noted that planning involves a co-ordinated exercise between Ministries and departments of different disciplines.²⁵ It can also be argued that it is the Minister who has the political acumen and stature to negotiate with and advocate for the policies before ministries and departments which are not directly responsible for planning but whose co-operation is essential.

There are other important roles the Minister may be called upon to fulfil. Planning policies and decisions are intended to affect the communities for which they are designed. There is always the possibility that some of the people may misunderstand or oppose them. Consequently, there must be someone in the planning process whose function it is to explain the feasibility and purpose as well as the operation of those policies and decisions. The person concerned must have an understanding of the political issues involved. He must have the power of persuasion so that the policies and decisions may receive general acceptance by the public. The objectives and consequences of planning and development schemes need to be advocated and explained in the ordinary language that people understand and appreciate. The Minister, as a politician, will have or ought to have the necessary qualifications in his daily contacts with the public and it is submitted that he may be the best person, at any rate, on political grounds, for this vital role. In addition, there is within his own ministry, departments and experts whose opinions as to what should be done may differ in fundamental details, and it may be only through the political head of the Ministry that these differences can be resolved. Thus, the Minister is not only a law-maker and director in the planning process but in this context he may be regarded as co-ordinator and a public relations force in planning and development.²⁶

Nelson Kasfir has stated that there are at least two ways of looking

at planning, namely, the scientific way which is characterised by rationality and the best choice in development, and the political way which is characterised by the ability to make a choice between feasible choices.

Kasfir proceeds to illustrate his statement by a hypothetical set of facts: suppose the planner argues that development of industry by stimulating private investors is the best "scientific" method of rapidly increasing national income. Everyone wants incomes to go up, but it is also important to think about who will benefit from the increase. In most African countries it is the farmers who pay the bulk of the taxes out of which the government finances whatever development measures it takes. Thus, it might be argued that it would be better to develop agriculture rather than take a chance on industry. It may be possible also to argue that the industry should be developed on the understanding that a considerable amount of its profits will go towards the payment of farmers. In either case, the choice must be taken by the politician rather than the 'scientific' planner. Of course, it is possible to argue that the planner may be as qualified, if not more qualified to reach the same decision, as the minister. To this argument Kasfir provides an answer,

"If politicians are left out of the planning process, then appointed bureaucrats (who are often foreign experts) are making the decisions instead. We might even say that where elected leaders are not consulted, economic planners have become the politicians! The more we accept the claims of planners to be scientific - that is, to know what is 'best' in a given situation - the more we permit them to control politics."²⁷

The danger that planning may be divorced from the realities of politics was fully appreciated by a recent seminar on "The Role of Urban and Regional Planning in National Development of East Africa"²⁸ when in its report it recommended, inter alia, that planning is essentially an instrument of

government, and for this reason planning machinery has to be fully domesticated within the structure of government and that it should not be a back-room expert activity carried out in isolation.

CENTRAL PLANNING AUTHORITIES:

During the colonial period each East African territory had a central planning body normally called the Town and Country Planning Board and established under the Town and Country Planning Acts.²⁹ The Board was charged with the overall responsibility for the planning and control of development in all the major and minor urban centres of the region. The Boards were mainly concerned with ensuring that the towns, the municipalities, as well as the trading centres of East Africa, developed in orderly fashion. They were principally concerned with the enforcement of health regulations, segregation measures and of determining the size and direction in which the urban areas would develop. They were also concerned with the beauty and zoning of these areas. In most cases, the majority of the members of the Board were not qualified town planners even though the evidence available suggests that they often consulted professional planners in practice. The Boards appear to have been dominated by medical officers, sanitary officers, land officers and directors of public works. They nevertheless performed such duties as are currently performed by traditional planners.³⁰ The importance of the Boards in those days can be seen in the fact that their meetings attracted various ministers of the colonial administrations including the Governor himself who sat with them periodically in his official capacity.³¹ It can also be said that the present layouts and growth of most of the East African towns are direct results of their decision and work.³²

However, because the boards were mainly non-professional they neither adopted master plans nor produced any. Decisions were taken on problems as they arose and very little consideration was given to the future orderly development of the towns. Occasionally, they would invite a planning expert either from London or from some other British colony to go to East Africa

and make recommendations for their work. Commenting on the Uganda Town and Country Planning Board of the 1930s and 40s, Kendall concludes,

"The Board lacked the advice of a trained planner although the various qualified officials were consulted from time to time..... The absence of an overall plan created a lack of continuity and ad hoc decisions became the rule rather than the exception..... There appears to have been little real collaboration between the major departments of Government in regard to overall planning policy. The records of past minutes display wide divergence of opinion by members with the chairman being quite incapable of resolving them."33

At the beginning it was normal practice to send the board's proposed plans to London for the approval of the Secretary of State for the Colonies.³⁴ The inevitable delays that occurred did not assist in the solution of the planning problems identified by the board members. With the enactment of comprehensive Town and Country Planning Legislation in the United Kingdom, East Africa began to adopt the English planning system with its structure and procedure, and qualified town planners were gradually brought onto the membership of the boards. Kendall himself was the first of his qualifications and experience to be appointed in Uganda. It is proposed to discuss further the work of these early bodies in the planning and development of the East African towns and municipalities.

Since independence, the structures and functions of central planning organs in East Africa have been changed and redefined in contrast to the colonial situation. Moreover, the three countries have not always kept the same terminology and infrastructures and therefore it may be more rational to discuss these organs in respect of each country separately. Whereas in Uganda, the Town and Country Planning Board continues in its semi-autonomous existence, being a corporate body with distinct functions and powers, in Kenya and Tanzania the bodies which exercise similar functions and powers are incorporated within the hierarchies of the

ministries under which they operate.³⁵

UGANDA:

Besides the Minister, the other authority which is primarily concerned with the formulation of general urban policies and of giving directions is the Town and Country Planning Board. The Board's composition, functions and powers are prescribed by the provisions of the Town and Country Planning Act. The implementation of the general policies is the responsibility of the Department of Town and Regional Planning which is part of the Ministry of Regional Administrations. The statutory functions of this department include the giving of advice on all matters of physical planning to the Minister, the Town and Country Planning Board and to local planning committees. In addition, the department prepares town planning schemes and advises on their administrations. It also examines and makes recommendations on development applications for urban areas. The Regional planning section of the department advises District Planning Committees on regional economic planning and assists them in the preparation of development projects to be included in the national Five Year Development Plans.

Under the Department of Town and Regional Planning there are locally-based but centrally-controlled bodies known as District Teams.³⁶ These teams were established during the colonial period "to serve and preserve the interests of the colonial administrations in the whole country."³⁷ When the country obtained independence the new Government decided to retain the teams to be used in the translation and implementation of its policies at the local level.³⁸ The team consists of senior officers of the various ministries of the Government who operate from the field. The

concept of the District Team is that these officers who share local experiences should meet frequently to discuss these experiences and to design strategies that will best implement Government policies. In this context, a District Team is also a planning committee. It provides a forum for co-operation and co-ordination of policies at the district level. The chairman of the team is the District commissioner who is a senior administrator in the Ministry of Regional Administration and the chief Government representative in the District. He is the person who convenes and co-ordinates the work of the District Team. Lukwaya has made a case study of how the District team works.³⁹ Suppose that a planner responsible for the implementation of his departmental policy in the district wishes assistance from the District team. He will prepare a document laying down the method and technique to be used from the professional approach. He then introduces the document to the District Team and explains how it should be implemented. His proposals are discussed by all the members of the Team. In the end the team will resolve that each member and his assistants should, when visiting the areas concerned and addressing public rallies, propagate the ideas of implementation and that they should explain the benefits to be derived from the policy. Lukwaya found that a number of policies which had been treated under this method had been successfully implemented.

It is also part of the functions of the District team to collect and evaluate the necessary information required for planning and development. For example, land surveyors and geologists will be concerned with the surveying of the land and evaluating the natural resources of the district such as minerals and the soil. The Agriculturalists will be able to give an estimate of the potential of the land for agricultural purposes.

The District Education Officer and the Labour officers will consider human resources. The District Commissioner in collaboration with the Treasurer of the Local administration will assess the financial resources of the District. Lastly, it is the duty of the District Team to educate the public about general Government policies and specific development projects and to seek its support for them. Thus, the planning process in Uganda is highly centralised.⁴⁰

KENYA:

Kenya's approach to planning and development policies is one of decentralization.⁴¹ Below the Cabinet and its planning and development committees there is the Ministry of Economic Planning and Development which exercises the overall responsibility over the general and strategic policies of planning and development. Thereafter, the country's planning and development policy-making bodies are organised on a regional and local basis. At the Provincial level then is the Provincial Planning Committee consisting of the Provincial Commissioner and all the officers at the provincial level who are responsible for Agriculture, Medical services, Education, Physical planning, engineering, co-operatives and Trade, other departmental heads within the Province may attend the Provincial Development Committee and in any event they are expected to attend when matters related to their duties are being discussed. The committee has a full time secretary who is responsible for the day-to-day work of the committee. In addition, there is a Provincial Development Advisory Committee which consists of the Provincial Commissioner as chairman, the Planning Officer, the secretary,

all the other members of the Provincial Development Committee, all the members of Parliament representing the Province and two leading citizens nominated by the Provincial Commissioner in consultation with the Provincial Development Committee.

At the District level there is the District Development Committee consisting of the District commissioner as chairman, the Provincial Planning officer as secretary, the Provincial physical planner, the District community Development Officer, Agricultural Officer, Medical Officer, Education Officer, the District representative of the Ministry of Works, Clerk of the local County Council, and co-operative officer of the District; other district heads of Department may attend and are expected to attend when matters related to their departments are being discussed. Like the Provincial one, the District Development Committee is also assisted by an Advisory Committee constituted on the same basis as the Provincial Committee but this time on the District level. The membership of the Advisory Committee includes three members of the County Council (including the chairman of the Council), the chairman of K.A.N.U. for the District branch, and two eminent citizens nominated from the area by the District Commissioner in consultation with the District Development Committee.

Nairobi and Mombasa have their own Development Committees. These are constituted as follows:- The Permanent Secretary to the Ministry of Local Government is the chairman with the Permanent Secretaries of the Ministries of Finance, Economic Planning and Development, Education, Health, Housing, Commerce and Industry, Lands and Settlement as members. The District Commissioners of Nairobi and Mombasa are also members of their respective committees as well as Departmental heads of the Nairobi City Council and Mombasa Municipal Council respectively. Other Permanent Secretaries can also attend meetings of the two committees when matters

relating to their ministries are being discussed. The functions of the Development Committees are said to be the co-ordination and stimulation of development at the provincial and local levels by involving in the planning process not only Government officials but also the people through their representatives.

The structure described above was only recently established. Before that the function of planning and development was undertaken by the Department of Town Planning which had a Regional Planning section to cater for provincial and local interests on the same principles as the present system operating in Uganda.⁴² The department continues to be responsible for the preparation of physical plans and the implementation measures of development policies. However, the current Five Year Development Plan states that "the Department will decentralise its staff to form provincial Town planning offices as soon as the main central planning work can be made available." In addition the Department continues to advise all authorities concerned with the progressive development of urban centres.⁴³

TANZANIA:

It has been observed that in Kenya, decentralization was based on the desire to involve public participation in planning and development through elected representatives while in Uganda the administrative structure was designed principally to bring and interpret Government policy measures to the people. In Tanzania, on the other hand it was "the pull effect of Dar es Salaam and other urban areas on rural population, the increasing disparity in income distribution, and the failure to organize

economically viable rural communities which prompted the rethinking on the total administrative framework and on plan formulation and implementation."⁴⁴ This resulted in the creation of a Regional Economic Planning Division in the Ministry of Economic Affairs and Development Planning.

At the ministerial level there is the Ministry of Economic Affairs and Development Planning. One of its main functions is to advise the National Economic Committee, - a cabinet committee - of which the President is chairman. The Department has regional and local branches throughout the Republic. At the centre there is the Ministry which co-ordinates the activities of other ministries and parastatal bodies whose work is directly concerned with planning and development. The co-ordination is to be achieved through direct contact with the Planning Units of the various organs and meetings with voluntary agencies and the private sector in the planning process. The Ministry officials at regional and local levels are given specific duties to perform. They are expected to use their initiative in identifying potential areas of development. They refer all professional matters which do not fall within their competence to the Ministry for advice and guidance. They also assist in the compilation and improvement of regional and local statistical data required for planning. They act as chairmen of the Regional and Local Planning Committees which consist of ministerial and parastatal representatives as well as representatives of voluntary organizations and of co-operatives and the private sector.⁴⁵

The responsibility for implementing the planning and development policies as determined by the above organs and the preparation of actual plans and schemes is vested in Area Planning Committees which are assisted and supervised by the Town Planning Division. The Division originated from the colonial era.⁴⁶ During the colonial period the Governor-in-council

appointed the Town and Country Planning Control Board under the Town and Country Planning Ordinance.⁴⁷ The Board was not only the source of planning powers but also the authority responsible for formulating specific schemes for urban centres throughout the territory. The Ordinance had provisions to the effect that the Board could delegate its powers to an Area Planning Committee whenever it deemed it necessary. After independence the ordinance was modified to make the Minister responsible for physical planning policies and to exercise such other powers as had been previously exercised by the Board. The function of preparing actual plan schemes remained in the Area Planning Committees as assisted and supervised by the Town Planning Division of the Ministry of Lands, Housing and Urban Development. Besides the control of the development of urban areas the Division assists in the Planning of Ujamaa Villages in rural areas. The current Five Year Development Plan of Tanzania enumerates three basic functions of the Town Planning Division as follows:-

- (a) To ensure the orderly growth of urban centres assigned high priority for development. This is envisaged as involving the provision of adequate economic infrastructure in urban areas, especially in Dar es salaam and Arusha.
- (b) To provide services in association with the Survey Division for the physical planning and lay-out of Ujamaa Villages in the rural areas.
- (c) To link these two types of development by planning for the growth of Urban-Ujamaa settlements in the outlying parts of the towns.⁴⁸

However, the organisation for the implementation of the national Development Plan is structured in such a way that sole responsibility vests

in the Ministry of Economic Affairs and Development Planning. This responsibility is defined as "formulating, directing and co-ordinating the overall social, economic and financial policies of the country." In addition the Ministry is responsible for co-ordinating and controlling the proper timely execution of the Plan. It was to facilitate the co-ordination of development effort at regional and, district and village levels that development teams, known as Regional Development Committees, District Development Committees and Village Development Committees respectively, were set up to supplement the work of and offer easy links between the Ministry and the various administrative units in the country.⁴⁹

PART B: LOCAL AUTHORITIES

In the context of urban planning and development Local Authorities in East Africa may be divided into three main groups.⁵⁰ The first group consists of urban authorities of the cities and the big towns such as those of Nairobi, Dar es salaam, Kampala, Mombasa, Arusha, Kisumu and Jinja which exercise relatively wider powers of planning and development control in areas under their jurisdiction. The structure and functions of this first group of authorities can be compared to those of an English borough council on which they are *historically modelled*, though the latter enjoys more autonomy and powers than its counterpart in East Africa. The second group may be said to consist of authorities of the smaller urban areas whose functions are limited to such matters as the cleaning of streets, control of markets, granting of licences and permits and generally to the implementation of *specific Government schemes* and projects. The third group consists of District Councils which are in charge mainly of rural matters.⁵¹

Before discussing the role of Local Authorities in urban planning and development it may be useful to examine briefly the theories about and the rationality of local government as applied to unitary and highly centralised states such as those of East Africa. Local Government, or as it is known in Uganda, Local Administrations, is a term applied to authorities, bye-laws, rules and regulations and matters connected therewith which govern and control the activities of a given locality, which is legally recognised as forming an administrative unit which has a separate identity from other such units, all of which are under the ultimate authority and jurisdiction of a central Government of a Sovereign-State. In federal states, the status, structure and powers of a local

administration are jealously guarded, and are usually the subject of entrenched constitutional provisions. The need for the federation is dictated by political and economic factors rather than by any other considerations. The component parts of the federal state may have agreed to join the federation for certain matters such as defence, external affairs and fiscal and commercial regulations, but in all other matters and policies the component parts may insist on maintaining a division, and if need be, a unique local characterisation of doing things.⁵²

In unitary states the need for Local government is justified on different grounds. In his 'Representative Government,' J.S. Mill said,

"The object of having a local representative is in order that those who have any interest in common which they do not share with the general body of their countrymen may manage that joint interest by themselves."⁵³

The following reasons may be similarly advanced to justify local Government:⁵⁴

- (a) Local control of public affairs permits variation in government according to the differences in needs of local character and circumstances.
- (b) Each local area has its own difficulties which are peculiar to that area and it is the local inhabitants who know best how to tackle those difficulties - hence the need to give them greater say in the government of their area.
- (c) Individuality of approach and flexibility are essential to the organisation of any progressive community and too much centralisation tends to destroy local initiative and to stultify progress.
- (d) Central legislative and administrative organs have so much else to do that it would be asking a great deal of them to discuss and solve minor matters such as the cleaning of towns, control of local markets and the lighting of streets. While these organs should be left to determine and decide on the overall policy, local authorities are the most

suitable to implement the details of the policy with, if need be, the persuasion, guidance and control of the relevant organs at the centre.

- (e) Local government fosters civic consciousness thereby contributing to the awareness each individual should have of his responsibility towards the community.
- (f) The raising of funds locally may encourage the development of the area if the local people know it is their money they are spending. There may be the promotion of local industries and this may raise the standard of living of the local inhabitants.
- (g) Local Authorities are said to maintain continuity of policy since they are mainly concerned with administration rather than with broad issues of political theories.
- (h) Local Authorities enable the general public to feel a more intimate contact with the Government. Officials of local authorities are usually local men and women who are primarily concerned with the needs of the local people but who, in their concern for those needs, have to have regular contacts with the officials at the centre. They are therefore the link between the Government and the people.
- (i) The characteristic impersonality of the bureaucracy of a central Government is easily avoided by having a local authority. The local administrator who lives with and shares the same amenities as the local people may be prompted to act through self-preservation rather than through duty, which is sometimes carried on reluctantly at the centre.

In contrast the following are given as the disadvantages of local authorities:-

- (1) Local authorities are regarded as a hindrance to a systematic planned economy and to the process of nation-building which is fashionable in the developing countries these days.
- (2) With so many varied interests and ideas pertaining to local administrations, national resources of manpower and finance which should be directed to one common purpose of development are likely to be diversified to the detriment of Government planning policies.
- (3) Local government does not always attract the right kind of people. In many cases, councils are likely to be dominated by small cliques of local persons, not rarely

with selfish motives in mind. This often results in lack of active participation on the part of the local inhabitants. For example, with the exception of some important issue of local policy on which they are held, local elections, where they are permitted, are characterised by low polls, compared to the national elections.

- (4) Largely as a result of the above factors there is more incompetence in local government than there is in the central organs of Government. Consequently, there is little actual planning and this may lead to a great deal of financial expenditure and wastage on petty development projects.
- (5) It has also been suggested that officials in local government are more easily corrupted than those in central Government. It is argued that since many of these officials are local people, the temptation to benefit their relations and friends or those from whom they expect some sort of return by way of gratitude, is greater than at the national level where the officials do not often see or know the people they are deciding for. Secondly, the remunerations which are legitimately paid to local officials are so small compared to those payable to national public officials that they are often supplemented through illegitimate means.⁵⁵
- (6) Sometimes there has been so much active participation in local government by national political leaders that local issues have to be abandoned in favour of political propaganda and advantage. Sometimes this may lead to political blackmail, nepotism and corruption.⁵⁶

In examining the organs of local authorities which are involved in the planning and development process there should be an attempt to discover whether the system tends to encourage the advantages and discourage the disadvantages which have been enumerated above. In view of the fact that central planning authorities in East Africa operate at all levels from the ministerial to the District level, there is very little that local authorities contribute to the formulation of policies and schemes for planning and development. Reasons may be given for this state of affairs.

Local Authorities in East Africa have been so politicised that they can be regarded as mere extensions or agencies of the Government.⁵⁷ For instance, during the civilian administration of Uganda, all the nominated councillors who formed the majorities of all councils throughout the country had to be members of the Government Party.⁵⁸ Before the military coup d'etat in 1971, the ruling political party, the Uganda Peoples Congress, had resolved to politicise not only all the councillors but also all the permanent officials of the local authorities.⁵⁹ This would have meant that no one who did not support the congress could have been elected or nominated as a councillor or appointed as an official of any local authority. Although this policy was given as one of the eighteen reasons for the coup d'etat when the military Government assumed power it removed all councillors from office and dismissed most of the permanent officials of local authorities. The latter were replaced with either military officers or persons whose support and sympathies were exhibited publicly in favour of the military administration.⁶⁰ No new councils have been established since the military takeover and all the functions previously performed by councils continue to be performed by the appointed officials.⁶¹ Similarly, in both Kenya and Tanzania Council membership tends to be limited to the supporters of the ruling political parties, namely, K.A.N.U. in Kenya and T.A.N.U. in Mainland Tanzania.⁶² In the case of Zanzibar, the local political party has, since the act of unification with Tanganyika, tended to be superseded by the membership of the Revolutionary Council and its branches throughout the island.⁶³ The views and ideas of these local political appointees and officials are likely to be nothing more than those of the national leaders of the political parties. When asked what the local council's urban and rural development plans were for the

Kigezi Local Administration, the then Secretary-General of the Council, insisted on answering every question by referring to the national proposals of the Uganda People's Congress as expounded by Dr. Obote, its President, notwithstanding that the problems of planning and development in Kigezi on which the questions were directed were peculiar to that District.⁶⁴

By statute, all local authorities in East Africa are placed completely under the control of the Central Government.⁶⁵ The Government controls the election or appointment of their senior officials, the meeting of local councils, the bye-laws that may be passed, and in some cases, the transactions that the authorities may decide to engage into. Apart from appointment, the minister may discipline and dismiss officials of local authorities. The Minister may delegate some or all the powers of a Council or local authority to some other official or public body. In some cases the meetings of local authorities are regulated and may be held only with the approval of the minister. All the standing orders and regulations governing councils and local officials must be approved by the minister.⁶⁶ There are occasions when the Minister or a person nominated by him is entitled to address councils at their regular meeting. In the last resort the minister may take over from a local authority where he is satisfied that it is unable to function either for lack of staff or facilities.⁶⁷ The functions, duties and powers of local authorities are prescribed by statute. The statute will usually begin with a general provision to the effect that local authorities are to assist in "the maintenance of law and order and the good government of the area." It will then enumerate other functions and duties under two categories, the details of which are normally provided in schedules to the Act.⁶⁸ The first category will consist of services, functions and duties which a local authority is under legal obligation to provide, perform or do, as the case may be. The second

category consists of services, functions and powers which the local authority may provide, perform or exercise at its discretion and with the consent and approval of the Minister.⁶⁹

For the purposes of urban planning and development the local authorities directly concerned are the City Councils, Municipal Councils, Town Councils and Urban Authorities established under the various Acts of Parliament of the same names, respectively.⁷⁰ Each of these councils meets frequently to carry out its functions and duties and will be divided into committees each responsible for one or several of such functions or duties. For example, the Kampala City Council report of 1970 indicates that the Council met at the end of every month and its functions were carried out by 12 committees, namely, Administration, Appointments Board, Education, Finance, General Purposes, Housing, Joint Plans, Lands, Liquor Licensing Board, Public Health, Public Works and Traffic Control. The Joint Plans Committee was responsible for considering development plans for the city. Its membership would consist of representatives from Lands, Public Health, Public Works, Finance and Traffic Control Committees together with the permanent officials from appropriate departments. The task of the Joint Plans Committee and of the Council consisted mainly of approving the planning proposals submitted by the permanent officials of the council.⁷¹ The Departments of the council were those headed respectively by the Town Clerk, Chief Engineer, Supervisor of Public Works, Medical Officer, Sanitary Officer, Treasurer and Surveyor. Each of these departments employs varied numbers of professional and semi-professional personnel. The Council is *al* thus the Planning Authority within the Kampala planning area and it has the responsibility of approving and controlling all the building plans subject to the comments of the Department of Town Planning and the approval

of the Minister. Though the Town Clerk's Department is mainly administrative, under it are important sections such as the legal section whose functions include drafting and enforcing council bye-laws and regulations.⁷²

The structure described here should apply to the cities and to all the major Towns in East Africa. However, because of lack of expert personnel and adequate financial provision only the three cities and the bigger of the Towns like Mombasa, Jinja and Arusha have been capable of utilising the system more effectively.⁷³ For the rest of the towns the planning work is undertaken for them by the Department of Town Planning in each of the respective countries. But even those authorities which are able to do their own planning find their plans and decisions subject to comments and final approval of the Government Town Planning Department. It can be said therefore that in the majority of cases the main function of local authorities in East Africa in urban planning and development consists of implementing plans, schemes and projects already prepared or approved for their areas.

COUNCILLORS:

The problems that arise in the organisation of local Government may be said to stem from the idea of combining the principles of democracy with efficiency and of ensuring that professional decisions about planning and development are fairly and reasonably assessed by the representatives of the people. Most commentators on local Government in East Africa appear to agree that there is inadequate democracy, that efficiency is lacking, that professional decisions are few and far between and that in any event

there are not any sufficiently qualified councillors to pass reasonable judgment on such decisions.⁷⁴ During the colonial period, most of the urban authorities had a number of English-trained European local government officers either in executive or advisory capacity.⁷⁵ The junior officials of the councils may have lacked the necessary professional qualifications and experience but this did not matter a great deal since their decisions were subject to the evaluation and judgment of the qualified officers. Even when the councils came to be filled with nominated or elected representatives the influence of the professional local government officials remained considerable. For example the council committees continued to be dominated by the salaried officials of the local authority, and on certain specified matters such as education and finance the council could not override the decisions or proposals of the permanent officials without a reference being made to the relevant Minister or Department of Government.⁷⁶

With the coming of independence, a number of things happened. Most of the permanent officials who were expatriate had their contracts terminated or left of their own accord. With the exception of the cities and the bigger towns, the post-independence Government found themselves unable to afford replacements. At the same time, the inhabitants demanded and got greater representation on their local councils.⁷⁷ The majority of the new representatives had neither the necessary educational qualifications nor the experience to understand and perform all the duties prescribed by the various Local Government Acts and regulations. To make matters more complicated the councils were given considerably more powers than those exercised by their counterparts during the colonial administration.⁷⁸ The period following the granting of independence witnessed a worsening situation in local government administration throughout East Africa with

perhaps the exception of the three councils that governed the cities. Commenting on the position in Uganda, Burke remarked that lack of transport and the ignorance of many of the councillors made it impractical for many councils to be employed usefully.⁷⁹ Writing on Kenya Hannigan observed,

"changing times have not improved the position. Things are very much in a state of flux so far as the field of administration is concerned..... the team organisation seems to have broken down..... And finally there have been some interference by councillors in the work of the local government staff."⁸⁰

The Institute of Development Studies⁸¹ in Kenya has noticed that presently councillors can override their professional staff even in the day-to-day decisions where technical knowledge is likely to be more relevant than general issues of policy. Where councillors are not familiar with the language of council debates or where they have no grasp of procedure or knowledge of technical questions, one of two things may happen. A minority of the councillors who are knowledgeable about these matters may have disproportionate influence, or the permanent officers of the local authority who are invited to meetings to advise the Council on planning matters may dominate the proceedings.⁸² Commenting on the changes that have taken place in Local Government of Tanzania since independence, Dryden states,

"But the attainment of a new legal status brought no automatic improvement in the quality of local government. If there was any change in performance, it was in most cases a change for the worse. The deterioration revealed itself mainly in frequent financial crises and insolvency brought about by irresponsible decision-making on the part of councillors..... in the post-independence era."⁸³

In the quest for nation-building and the survival of the ruling political parties, loyalty to the party and to the leaders was placed first in the qualifications for appointment or election to council posts. The introduction of one political party system of government, *de jure* in Tanzania and *de facto* in Kenya and Uganda, meant that only the supporters of the one accepted political party would be nominated or elected to council and council offices.⁸⁴ This practice became effective in eliminating persons of different political persuasions from the administration of local government even though there had been no evidence that their inclusion onto the councils would have been disruptive of government business. Indeed, in a number of cases, members of opposition parties had previously proved useful debaters and administrators in local government.⁸⁵ In some instances, the elimination of opposition parties from participating in local administrations resulted in the opposite of what the Governments had declared to be their purpose. In areas where these opposition parties had had considerable support the residents became suspicious of the new political moves and tended to be unco-operative with government agencies concerned with planning and development.⁸⁶ Thus, rather than unifying, the new policy became divisive. Occasionally, Councillors and Council officials were nominated and elected not so much for what they could contribute to the work of the council but as a reward for the services rendered to the ruling political party or for removing them from the national political scene where they might have proved an embarrassment to the national leaders.⁸⁷

Although the electoral laws for the National Assemblies invariably provided for educational standards and proficiency in the language of the National Assembly, this was not always the case with candidates

for local government.⁸⁸ There were occasions when the appointed or elected councillors could neither write nor read the languages used in council affairs. In such cases it is apparent that council minutes or agendas previously circulated to members could not have been understood. Few of these councillors apprehended the proceedings in council meetings. Much of what has been said here applied to most of the District councils and the minor urban authorities.⁸⁹ The City Councils and the bigger town Authorities fared better in relative terms. Membership of these continued to be drawn from the more educated class of the urban institutions and organisations. In addition, senior administrators in the Government could also be nominated to the Councils.⁹⁰ Moreover, most of them could afford and continued to rely on the services of expatriate professional planners and advisers. For instance, describing the administrative structure of the Nairobi City Council, Hannigan observes,

"The administration is in the hands of about 100 highly qualified professional officers, most of whom are expatriates who were persuaded to stay for a period of time..... Although it has been partially successful in recruiting African legal, medical and engineering staff, will have to retain about thirty to forty expatriates over the next few years. In contrast, education and social services have been almost entirely Africanised. There has been little success in the field of finance and accounting where, even with a training scheme, only three Intermediate Accountants have been as yet trained."⁹¹

Hannigan was writing in 1966, but to-day the evidence suggests that Nairobi has continued to rely on the employment of expatriate staff in the formulation and implementation of its planning and development as evidenced by the Proposal for the Investigation of Land-Buying Activities in Nairobi Squatter settlement of Mathare Valley.⁹² In the Proposal, the Director of

the Nairobi Town Planning Section, an expatriate, wrote to the New York-based International Legal Center, soliciting for research funds and personnel for the investigation and recommendation in relation to the development control of the settlement. The research team was to be composed of four expatriate senior officers and three non-professional and junior African assistants. Similarly, writing on Tanzania, Dryden noted that Urban Councils, being located in areas of commercial development, were able to draw for their membership upon a body of councillors who were better equipped to undertake their role in the Local Government system. Moreover, the constitution of a town was devised also to include on its membership certain senior officials of the Central Government stationed there, such as the District medical Officer and the Chief Engineer of the Public Works Department who had equal voting rights with elected members. Dryden continues,

"The urban authorities enjoy other advantages. Being main centres of population as well as for the development of the country as a whole, they have for long been able to count upon regular and substantial financial assistance from the central Government for the expansion of their services."⁹³

In the late 1960s both Kampala and Jinja were able to finance the employment of expatriate planners as consultants in their planning and development schemes.⁹⁴ In spite of the healthy position with regard to professional personnel, East African cities and towns continue to lack experienced councillors. For example, between 1967 and 1972 the composition of the Kampala City Council changed four times and during this period only candidates who supported the Government party were appointed councillors.

Everytime the council changed in membership none of the new-comers had had experience in the planning and development process even though they represented various professions and trades within the city. The same changes with the same results have been observed elsewhere in East Africa.⁹⁵

PART C: THE FINANCIAL POSITION OF LOCAL AUTHORITIES

One of the reasons why the East African Governments insist on greater control over local authorities is that the latter do not have sufficient funds of their own and have to be subsidised from Government grants. Further, because of the shortcomings in local government which have been discussed, local authorities have been found to misuse public funds by spending money on unauthorised projects.⁹⁶ In some cases they have failed to direct and control the ways in which money shall be spent. In any case most of the local authorities lack experienced and sufficient numbers of personnel to raise and plan for the use of moneys that may be obtained locally.

To-day, local authorities spend considerable amounts of public moneys for providing public facilities and services and for performing their duties. Before the advent of the colonial administration, taxation by traditional rulers and chiefs was well known. In Acholi, for instance, it was obligatory on every successful hunter to give the Ruot (chief) the hind leg of an animal speared to death by the hunter. In the case of a trapped animal, the hunter gave the front leg as a form of tax. In the kingdom districts, the King was always entitled to various forms of tax payable by his subjects. Moreover, he might be entitled to appropriate a certain amount of goods or a sufficient number of cattle to assist those of his subjects who might have suffered a misfortune. In many other areas, grain, food stuffs, goats and cattle were given to the rulers or chiefs as forms of tax. The rulers did not always consume or use these goods and animals personally. Persons who carried out civic duties, such as rain-makers, warriors, dramatists and chiefs were paid for their services, and the taxes provided the funds from which the

payments would be made. Compensation for injury or damage done to other tribes or loss in persons and property might be undertaken. All this amounted to expenditure by the traditional administrations.⁹⁷ This historical note has been found necessary because it is sometimes said that one of the reasons why local government in Africa has failed is because traditional custom did not recognise civic duties in the same way as they are understood to-day.

The coming of the Europeans brought with it the introduction of currency.⁹⁸ The functions of local government increased the possibility of greater expenditure and therefore a greater demand for taxation. At the beginning a few people could afford to obtain the necessary money. Those who could not were obliged to work on Government development projects and their labour was regarded as a substitute for tax. Some of the administrators and the chiefs who were responsible for operating the system abused it so that what had originally begun as an excellent idea of substituted tax came to be converted into forced labour for the benefit of a few.⁹⁹ One consequence of the abuse was that many people began to identify the payment of tax or the doing of unpaid labour in exchange as an example of oppression instead of a desirable system that was intended to benefit the community as a whole. Apart from the infirm and the old every adult male was liable to pay tax whether or not he had any income. It was inevitable therefore that those who had no money had to work on public development projects. As late as 1938, the Native Administration Tax Ordinance of Uganda provided that those who could not afford to pay tax in cash had to do unpaid labour.¹⁰⁰ Gradually, people began to be educated and through the introduction of cash crops, paid labour, and the liberalising influence of the missionaries, taxation in money replaced the much abused system of taxation in labour.¹⁰¹

The levying and collection of local taxes has continued to be the

responsibility of local authorities.¹⁰² However, because of the hostile attitude of the people to the levying and collection of tax and the inefficiency of local government authorities, local expenditure on development and public services is always greater than the revenues actually raised.¹⁰³ Moreover, this expenditure has continued to grow from year to year when in some cases the collection of local taxes has fallen below the estimates. In the case of Uganda, for example, in 1940 no local administration spent more than shs. 140,000/=. By 1956, no local administration was spending less than that figure. To-day most Local Administrations present annual financial estimates of expenditure in terms of several millions of shillings.¹⁰⁴ Sources of Local Authorities' revenue include the following:- graduated tax, rates and rents, market dues, fees, fines interests on investments, if any, loyalties, donations, contributions and endowments, reimbursements and such other sources as the Minister may approve.¹⁰⁵ Additionally, there is a Block Grant from the Consolidated Fund and such other grants as Parliament may approve.¹⁰⁶ For many of the local authorities it is the latter source which makes the greatest contribution to their revenues. An internal auditor reporting on the accounts of Chuuya District Council in Tanzania in 1965 wrote,

"Financial instability is worse than ever. Only 45% of the total revenue estimate had been collected up to the end of July 1965. Bank overdraft has existed since April with large sums charged monthly as interest."¹⁰⁷

He also noted that the reasons for this instability were the lack of effective control, the quality of local authority's employees and the lack of adequate finance to improve and expand financial services. About the same time it was discovered that local authorities in Mbeya

and Nachingua had made unauthorised expenditures to a total of shs. 30,000/=.

In Uganda, the Auditor General discovered that the local Administration of Mengo had spent over three million shillings which could not be explained in terms of authorised functions and activities.¹⁰⁸ In January 1965, the Kenya Minister warned the Kakamega District Council that unless it put its affairs in order he would dismiss all the Councillors and replace them by a commission. In March the same warning was repeated to Masakha County Council and in the same month the Minister stated that the reasons why County Council finances were appalling were "failure to collect graduated personal tax, inefficient accounting procedure and wasteful expenditure." This state of affairs can be exemplified by the fact that in Machakos, in 1961, out of 108,000 registered ratepayers only 15,000 paid rates and in 1962 only 17% of the estimated target was realised while in 1964 the situation improved to 44%. In Masaku the 1964 estimate revenue from the taxes was £205,000 of which only £113,000 was collected and in Kakamega, out of an estimated £176,000 only £78,000 had been collected by November 1964.¹⁰⁹

In urban centres two main factors have been said to determine the yield of income from rates. The value of the land and the investments thereon and the percentage of rate of tax fixed for that value.¹¹⁰

To a great extent the yield will depend on how frequently the land is revalued. In Kenya, the taxation of wealth by urban authorities is based on the system of unimproved site value.¹¹¹ The intention is to tax only the value of the land without taxing any investments or improvements on it, such as buildings. The rationale for this system is the taxation of an increment in the value of land without any economic disincentives being created. The concept is that the supply of land is fixed and the increase in its value is due to no effort of the landowner. Furthermore

if the land is taxed, the landowners are forced to make productive use of the land so as to have income to meet tax liability. One of the attractions of the unimproved site value system of rates is that in a developing country and especially in expanding urban centres land values are supposed to increase rapidly and make rates a highly elastic source of revenue. However, this has not been the experience in Kenya where the general growth of rates has been rather static and in some cases on the debit side. The reason for this can be said to be lack of regular revaluations of the land. The valuation of total land for tax purposes was done between 1957 and 1959 and these values were used in 1959. And although legally there should have been a revaluation every five years none was started until 1969.¹¹² By September 1970 Mombasa was still using the 1959 Valuations and had not contemplated any revaluations. The difficulty faced by all the urban authorities in this respect is lack of manpower. Similar or longer delays in revaluation of urban land and properties may be witnessed almost uniformly throughout the East African urban authorities.

On the other hand, whereas the Governments have tended to reduce the functions and duties of District Councils the reverse is true of urban and municipal councils.¹¹³ This has resulted in the expenditures of municipalities outpacing their revenue in growth and the further deterioration of their financial position. For example, between 1964 and 1965 the Kenya urban and municipal authorities showed significant surpluses in their total budgets. Between 1967 and 1968 with increased populations and newly acquired responsibilities revenue and expenditure were generally about even, but since then they have shown persistent deficits. Since local authorities must finance their deficits from their savings or reserve accounts, the effect has been not only the reduction in reserve accounts

but also their inability to finance further capital expansion from internal resources.¹¹⁴ Although it is stipulated in the current Five Year Development Plan that urban and municipal authorities in Kenya will have no alternative but to make vigorous efforts to increase local revenue from existing resources and also the seek new ones, there is little doubt that there will be pressure on the Government to provide the extra money required. Between 1964 and 1969 the Kenya Governments' direct Grants to local authorities increased by 88% but the high percentage growth remains inadequate.¹¹⁵ Thus, for financial reasons too the East African Governments cannot afford to let local authorities run their own affairs without effective direction and control from the centre. Coupled with shortage of finance there is also the problem of lack of professional and qualified personnel. For the most part the urban authorities have had to rely on administrators and expatriate staff who are not necessarily the right kind of people to plan and administer their service and development schemes and projects. The role and influence of these planners administrators and expatriates are examined in the next section of this chapter.

SECTION II: THE PLANNERS

A great deal of what may be planned and developed depends on the advice of professional planners and permanent administrators employed by the departments concerned with planning and development issues and policies. We have seen that the composition of planning and development bodies whether national, regional or local is constituted in such a manner as to include heads and senior representatives of the departments and institutions concerned. The inclusion is based mainly on the professional and administrative experiences of such heads and representatives. It can be said therefore that all the urban planning and development proposals and schemes currently implemented and considered in East Africa were originally initiated by this group of people and they continue to be translated into action and implemented by the same people notwithstanding that the ultimate legal and political responsibility for them rests with the Minister and the elected or nominated local councils.¹¹⁶ Consequently, an understanding of the planning process must take into account the nature and role of this category of planners.

PART A: LOCAL PLANNERS

The East African Statistics Department has revealed an acute shortage of manpower, particularly in the professional disciplines of engineering, surveying and law.¹¹⁷ Other research findings and development studies undertaken by different disciplines both publicly and privately have come to the same conclusion.¹¹⁸ Various reasons have been given for this shortage. During the colonial period technical education was limited to the

indigenous students who were designed to assist expatriate professional staff loaned to the territories for planning and development purposes. The policy was to produce what were technically known as sub-professional local officers in such fields as education, medicine, forestry and administration. The colonial government was able to draw on its home manpower resources for any major tasks of planning and development. The sub-professional local personnel could be used as assistants in gathering data, administrative duties, inspectors of smaller projects, assistant draughtsmen, sanitary engineers and interpreters.

Before independence, most of the East African sub-professional group in planning and development were trained at ill-equipped and inadequately staffed technical institutions like the Kyambogo technical college in Kampala.¹¹⁹ Although the curriculum of such places included the usual subjects like Mathematics, Surveying, Land engineering, Road construction and Maintenance, urban planning, water supply and civil engineering, evidence suggests that not enough was taught or acquired to equip the students with qualifications and experiences that would be necessary for the post-independence tasks of planning and development. On several occasions students either staged strikes or abandoned the courses on realisation that they were getting inferior training.¹²⁰ Those who managed to complete the training found that their qualifications and diplomas had no international recognition or acceptance. For example, those who went to countries like Britain for further studies found that their diplomas in engineering and surveying were ignored by the institutions of their choice and they had to start from the beginning just like their British counterparts who had just completed school education.¹²¹ A small number of those who went to overseas institutions managed to graduate in planning and development subjects and returned to work with and understudy

the expatriate planners and administrators. One of the reasons for going abroad to do further studies was to enable the candidate to enter into a form of apprenticeship with established engineering firms and local planning departments, say, in the United Kingdom. The candidate acquired certain skills and techniques which made him a qualified planner as far as his profession in the United Kingdom was concerned. However, this did not necessarily mean that those skills and techniques were relevant to the conditions and circumstances of East Africa. Be that as it may, on completion of his training and apprenticeship he was recalled and given an important role to play in the planning and development of his country. It was not until the establishment of the Nairobi Institute of Engineering within the University of East Africa, as it then was, that training in this field at an international and professional level of recognition came to be well founded in East Africa.¹²²

The majority of the qualifiers from the local institutions came to be employed as assistant technicians mainly to do tasks of a routine nature.¹²³ Those of them who showed considerable ability through field experiences were placed in charge of small planning areas within the country. A few lucky ones joined the ones who had gone and returned from abroad to head important policy and administrative sections in the relevant departments. With the coming of independence two things happened. Firstly, the few local experts and planners were called upon to leave their professional careers and become either politicians or civil servants of the administrative class. Engineers became Ministers, Permanent Secretaries or regional chief engineers and many members of the professional classes were taken on to assist the new nationalist Governments, not in planning but in the administration of the new sovereign state.¹²⁴ In a number of

instances, the local planner ceased to be the professional technician and became part and parcel of the policy-making machine of the state. This was one of the reasons why it was found necessary to recruit more expatriate staff to replace some of the local personnel who had been absorbed in the public administration. Secondly, as most of the local planners and administrators in senior posts had been trained overseas and perhaps, not unnaturally, had a high regard for the educational institutions where they trained, they found it inadvisable to entrust the task of planning to locally trained personnel or to local planners who had not had the privilege of going to the same institutions as themselves.¹²⁵ Now that they were the policy-makers and the decision-makers in recruitment affairs they were able to take advantage of their new role in visiting the countries from which they obtained their education, in order to invite former associates and teachers to advise them on planning and development matters relating to their departments. Sometimes, the faith in the invitees was so paramount that it was not deemed necessary to pair them with or give them the assistance of local planners who had continued to work in the field.¹²⁶

There was another factor that tended to reduce the participation of local planners. The generation which took over after independence was less educated and certainly possessed less graduates in the administration than the generation that has emerged since independence.¹²⁷ The independence generation saw or imagined that, since the post-independence generation was more educated and perhaps more professionally - oriented, it would, if given the chance, replace the old administrators and any planning credit given to the latter would accelerate the coming of the replacement. It was better therefore that persons who had no designs on the established posts, that is, the expatriates, should be hired to do the planning rather

than the "ambitious, academic youngmen of the new generation."¹²⁸ The members of the new generation found it difficult to be employed in departments doing the functions for which they had been trained. Many graduates and professional young people found the situation so intolerable and frustrating that they sought other employment prospects in private industry, private practice, international organisations operating in the region and the universities. A number of them returned abroad, not to study but to work.¹²⁹ The shortage of manpower was thus worsened by a "brain-drain" from East Africa to international institutions and to countries of the developed world. Another factor that tended to increase this movement was the realisation by a number of these graduates that having acquired technical skills in the developed countries the chances of putting them to use in their own countries were practically nil for lack of resources and equipment.¹³⁰ The rivalry and disillusionments were not confined to single departments. For example, the Report presented to the Addis Ababa conference on Aspects of Development Planning in Africa showed that rivalries between Government Ministries on the degree of departmental autonomy made it difficult to co-ordinate plans.¹³¹

Moreover, since the number of local experts who are involved in planning and development is relatively small, they are often called upon to do jobs which little connection with the specializations for which they have were trained or originally hired. They may have to accompany Ministers to overseas international conferences, be appointed chairmen of parastatal corporations, and in some cases become accredited diplomats.¹³² In 1971, Uganda had 30 urban planning areas and although a substantial number of these are either too poor or too small to afford qualified planners of their own, the number of planners for the whole country is still very small.¹³³ In that year there were only 22 people trained or engaged in planning. Of these only 11 were professional

planners. Of the 11 planners, two were employed otherwise than as planners and one was overseas doing a higher degree in planning. Of the total 17 actually working in planning, 11 were expatriates and of the remaining 6 Ugandans only one had had more than a short course in planning. It was estimated at the time that Uganda needed about 40 qualified planners. After the coup d'etat most of the expatriate planners left the country so that the situation now is worse than it was in 1970. In Kenya, urban planning work is organised on the basis of one Town Planning Officer for each Province.¹³⁴ However, the size of some of the Provinces is tremendous. For example, in Rift Valley Province alone the Town Planning Officer has the responsibility for some 200 centres scattered over a vast territory of some 50,000 square miles. He has to travel to all these places when road transportation is most inadequate in many of the areas to be visited. Occasionally, he has had to get the assistance of the Kenya Police Air Wing to fly to planning areas and perhaps this may not be the most suitable way of carrying on physical planning. In 1970, the planning of Nairobi, the largest city in East Africa, was the responsibility of a staff which included no more than 4 qualified town planners.¹³⁵ But as one of those four has observed, their work consisted of more than the actual formulation of plans for the city. They had to give written and verbal advice to Ministries, the Commissioner of Lands and Local Authorities.¹³⁶ It has been said that the Department of Town Planning in Kenya deals with about six hundred letters every month dealing with technical matters. Emphasising the problem of shortage of manpower Ohas has said,

"The greatest obstacle to the satisfactory development of our service centres is not the production of good development plans, but in the inadequacies of implementation. The satisfactory development of towns depends about 10% on a good plan and 90% on the quality of the day to day

administrative procedures and decision-taking required for its implementation. In Kenya the actual planning process is centralized under the Town Planning Department but implementation is the concern of a multitude of developing agencies. A strong local authority can handle this situation but many of our local authorities have no qualified staff and the qualities of control and advice leaves much to be desired."¹³⁷

The Tanzanian experience is similarly disturbing. A Canadian team which prepared the latest Master Plan for Dar es salaam observed,

"Town Planning administration and development control is carried out by the Planning Section of the City Engineer's Department, with the Town Planning Division of the Ministry of Lands, Settlement and Water Development acting in an advisory capacity..... In practice the Town Planning Division of the Ministry of Lands has to bear a large portion of the City's development control work due largely to staff shortages."¹³⁸

Because of these shortages there is no proper enforcement system with the result, that illegal development, particularly squatter housing, occurs on a grand scale and "blatantly along major routes."¹³⁹

Apart from the shortages, there is the professional orientation of the local planners who are in actual practice. Most of the leading policy makers and physical planners were trained in the West or Western - founded institutions and, not unnaturally, the planning attitudes and styles of the West have tended to dominate and characterise their East African planning objectives and results.¹⁴⁰ For instance, Colin Leys has observed that hitherto university education in Africa has been largely indifferent to the problems of development and that more seriously for the long run, this may be the result of the predominantly Western training of the local staff who have been succeeding expatriate staff and their heavy professional orientation towards the West, with scholarship.¹⁴¹ Indigenous

planners have yet to consider the relevancy and practical nature of their "home" grown plans for they still tend to regard any planning ideas from the West as being the most acceptable.¹⁴² We have seen that engineers feel uncomfortable in designing roads that do not meet the standards in use in the countries from which they obtained their training.¹⁴³ At a planning conference held in Kampala recently, the then chief Engineer of the City delivered a shortpaper on some aesthetic aspects of town design in which he said,

"Those of us who have travelled a good deal abroad know how the impression of a place and of a people largely depends on the beauty or otherwise of the cities and the buildings and the bridges in the cities.... Having spent some years now as Kampala's City Engineer I am particularly concerned with what form this city will take in years to come..... Beauty in architectural design and Town Planning can be found in many an old and charming English village..... the designers of these villages..... by a lively sense of fitness and purpose and the use of pleasant local materials produce a result that is often a positive beauty in the whole grouping. Uganda architects may well learn from these villages."¹⁴⁴

While the City Engineer may be commended for preferring the use of local materials the rest of his statement conspicuously omitted any proposals for the alleviation of the planning problems of Kampala none of which he mentioned in his paper. It may be that the narrowness of his paper confined him to making the observations extracted above or it may be that he genuinely believes that the architectural design of Kampala should be modelled on that of an old English village to produce the beauty he describes. Be that as it may, it can be contended that local planners are often influenced by the planning practices of the countries

in which they received their professional training and that they are sometimes oblivious to local conditions and circumstances of their planning areas. Fortunately, there is a growing number of those who have begun to think in terms of local needs and circumstances. Thus, Johnstone Mathiora has made the appeal that,

"Whatever approach we take we must remind ourselves that nothing could be more undesirable or unfortunate than an acceptance of a policy of keeping up with stern planning ideals, with stereotypes derived from international patterns of architecture and civil design, quite inappropriate climatically and ethnically to the needs of our particular society."¹⁴⁵

It is hoped that as more institutions of learning are established locally and research or planning and development problems undertaken by local scholars there will be a greater awareness of the special local conditions and circumstances and that the subsequent plans and schemes will cater specially for local needs.

One of the allegations often made against local planners and administrators is the tendency on their part to be influenced by issues of tribalism and nepotism when making planning decisions intended to effect the whole community.¹⁴⁶ The East African countries like most other countries of the developing world suffer from acute poverty. Whenever a person acquires a position of responsibility and the power to decide who shall benefit under a particular project, the temptation to select those of his tribe or family becomes great. While many will overcome the temptation there are others who fall victims to it. There have been numerous public inquiries held in East Africa to investigate allegations of tribalism and nepotism.¹⁴⁷ The Allen Commission Report in the affairs of the Kampala City Council considered many allegations of tribalism

and nepotism in all the departments and found that a substantial number of them had been proved.¹⁴⁸ Two typical examples from the Report may be given. When the Senior Legal Adviser in the Town Clerk's Department retired the Town Clerk refused to advertise the post because he wanted an appointee of his own choice.¹⁴⁹ While he was negotiating for the appointment of his candidate he temporarily filled the post with one individual who had been struck off from the roll of advocates. It was alleged that the Town Clerk tried his best to get his own candidate appointed by the Minister. The candidate was a fellow tribesman and a relative. The commission concluded that although the Town Clerk was apparently acting legally there was some evidence of nepotism and tribalism. The Commission recommended that the acting legal adviser who had been struck off the roll of advocates should be removed forthwith and the post be advertised. The second example comes from the City Engineer's Department. A complaint was made against the City Engineer that he was retaining unqualified people in his department simply because they were either his friends or because he did not want junior officers to be promoted "for reasons best known to himself." An instance of this was given as the circumstances surrounding the retention of the Building Engineer of the Department. This engineer had been retired compulsorily by a Government directive. However, the City Engineer renewed his contract in contravention of the directive and the Commission found that part of the complaint had been substantiated.

Another serious problem is that of corruption. In reference to the Allen commission, the following instances of corruption were found to have been proved: In July, 1967, the District Health Inspector was instructed by the Chief Health Inspector to sanction the issuing of a liquor licence to Kijjambu Bar even though there were still supposed to be outstanding health requirements, especially concerning toilets,

to be dealt with before it could be issued.¹⁵⁰ The Chief Health Inspector acted on the matter during a weekend when the inspector in whose area the bar was situated was attending a conference in Mbale. In fact there was evidence that the latter was opposed to the issuing of a licence before the hygienic conditions of the premises were satisfactory. It was further noted that before the order to issue the licence, the proprietor of the bar had spent some considerable time alone with the Chief Health Inspector. The Commission observed that the Chief Health Inspector had shown special and unusual interest in licensing a bar which should not have been licensed and that it was difficult to avoid the strong suspicion that the Inspector had been influenced by the proprietor of the bar. The Inspector had also shown similar unusual interest in the licensing of two other bars, the proprietors of which he personally knew. It was also alleged that the Town Clerk had taken and used Council materials and equipment as well as the employees of the Council on his private house at Plot 2-4 Semawata Road, Ntinda, without paying for them at all. The total loss suffered by the Council amounted to shs.12,512/70. It was not until the City Treasurer handed the case to an advocate acting on behalf of the Council that the Town Clerk admitted liability. The Commission then recommended that

"In future, Council officers should not be permitted to make use of council materials and manpower since it leads to misunderstandings and suspicions of this sort and senior officers might well take advantage of their positions and either refuse to pay or delay unnecessarily long in so doing (as was done in this case)."¹⁵¹

After reviewing all the allegations and all the aspects of the Council's activities the Commission concluded,

"Finally, we are of the opinion that the evidence adduced before us has clearly indicated that the Kampala City Council has been a very sick organisation for sometime past. The employees had many grievances which were either ignored or dealt with inadequately. There has been an almost complete lack of proper personnel management which, to a large extent, was due to a failure of contact and communication between senior officers and their subordinates, and this situation must now be rectified. The standard of administration at the top was very low and this resulted in considerable inefficiency and slackness at all levels.

Instead of setting a high standard of integrity and industry for their subordinates, some senior officers were weak, inefficient, dishonest and lazy and there were extremely strong indications of corruption in some areas... We feel that what the City now needs is in the nature of a blood transfusion, that is an injection of new people and personalities in the higher echelons. These new officers should be very carefully selected for their known ability and integrity."¹⁵²

It has also been discovered that local planners and administrators spend considerable time on their own businesses when they should be performing the duties for which they were hired.¹⁵³ This is particularly noticeable in respect of the more senior officers and heads of departments who are subject to little or no supervision.¹⁵⁴ The disturbing element of this practice is that quite often the private business is directly or indirectly connected with public functions and duties which those officers are supposed to perform. Thus, engineers and planners may own and administer private business which are concerned with construction and building. At the same time it may be these same officials who have the power to approve construction schemes and building projects as well as to grant or refuse licences to applicants. Housing officers may buy and rent houses while they possess the power to inspect and control residential premises.¹⁵⁵ In a number of cases it has been discovered that public

officials responsible for Government houses and flats have abused their powers and let those houses to themselves or their friends and relatives contrary to Government regulations. In one classic example such officials had let more than one house to either themselves or to their business colleagues at nominal rents for personal gain.¹⁵⁶ Elsewhere public officers have used their influence to obtain loans and hire of Government equipment for the running of their own private enterprises.¹⁵⁷ In both Nairobi and Kampala investigations have revealed a considerable number of public officials who own more than one private house and a string of businesses, the acquisition of which could not be explained either in terms of their salaries and savings or the spare time they have besides the period they ought to spend in their offices.¹⁵⁸ The result has been that these people have been able to get richer more quickly and at the expense of their fellow countrymen. It has also meant the neglect of the work for which they are employed at reasonably higher wages than the average East African employee. It is not surprising therefore that with shortages of manpower, finance and lack of personnel with the necessary calibre the principle of depending on foreign aid and expatriate staff should continue to be attractive in East Africa. However, as it will be seen in the next section the disadvantages of relying on foreign aid and employing expatriate staff are equally considerable.¹⁵⁹

PART B: EXPATRIATE ADVISERS AND PLANNERS

Some people have argued that the only way urban planning and development in Africa can have any meaningful purpose is if the plans are originated and implemented by the Africans themselves.¹⁶⁰ This is regarded as the ideal position when local circumstances, talents and finance are predominant in the planning and development of the societies in Africa. It has sometimes been equated with the right to self-determination and the concepts of self-help and reliance.¹⁶¹ Against this assertion three counter-arguments may be put forward. In the first place, whoever is responsible for the transformation of society will always meet pockets of resistance to his policies whether as a result of traditionalism, vested interests or human nature that tends to be impervious to change.¹⁶² In the second place, there is the realisation that problems of development tend to be universal and therefore must be examined in a world context. Prevailing attitudes and needs ought to be tackled at both the national and international levels.¹⁶³ The successes and failures observed elsewhere may lead to a reappraisal of the situation at the local level. Modern supra-national institutions and organizations and inter-state dependence have meant that a country has often to look beyond its territory to find solutions to its domestic problems. Nationalism gives way to international knowledge and assistance. The only condition is that such knowledge and assistance need to be selected carefully and intelligently so as to conform to local circumstances and conditions.¹⁶⁴ In the third place, a study of African's development problems, the analysis of its political institutions as well as a realisation of impatience on the part of the inhabitants all tend to show that changes on the continent are likely to be more revolutionary than evolutionary. The trends and fashions in

development will lead and have already led to abrupt breaks with the past.¹⁶⁵ Having observed that Africa lacks the necessary manpower and financial resources it is only reasonable to assume that personnel and finance need to be obtained elsewhere unless the speed of advancement in development can be halted which at present may be an impossibility. Consequently in principle and practice expatriate staff will continue to be relied on for advice and planning.

The prevailing theme of development in East Africa to-day is change; change of political institutions, change of economic structures, change of educational systems and ultimately change of social values. Once we begin to talk about change we are immediately faced with a number of searching questions. What is to be changed and why? How is change to be effected and by what means? What are the goals of change? What are the consequences of change? What motivates the people responsible for change, and, lastly, what benefit, if any, accrue to the community for which the changes are designed? In theory, these questions can be and have been answered in satisfactory manner. In practical terms, the answers are more difficult to evaluate because evaluation depends upon a number of factors including the feasibility of policies, availability of resources and means of development as well as compatibility not only with traditional values but also with the prevailing political, economic and social conditions of the particular society experiencing the changes. There have been some tentative suggestions intended to underscore these changes in East Africa. On the official level, there are ideological and nationalistic policies manifested in documents like the National Development Plans, charters and declarations.¹⁶⁶ These documents are often indicative of the Governments' commitment to a rational transformation of their societies from the status quo to something different and hopefully

better. The envisaged changes are supposed to emerge from careful planning and formulation of policies designed to accord with reality in resources, local environment and the demographic character and temperament. It is often at this stage of formulation that the Governments seek the advice and technical knowledge of the expatriate staff. Richard Gott, analysing the Tanzanian experience, said,

"The remarkable thing about Tanzania - and indicative of its continuing state of dependence - is that its definition of socialism is still to an astonishing extent in the hands of expatriates. The theory has been laid down and elaborated by Julius Nyerere. But for its socialist practice the Tanzanian Government and the nationalised business concerns are still forced to rely on expatriates in senior posts (And) this dependence is growing."¹⁶⁷

There are two ways in which expatriates continue to contribute knowledge and experience to the planning and development of East Africa. Firstly, they remain the largest group responsible for research activities that are necessary for development planning. Secondly, they are involved in the actual formulation and implementation policies and schemes. These two ways are examined here separately.

RESEARCH:

It has been estimated that 95 percent of all the research activities of the world are concentrated in 35 developed nations, with the developing countries accounting for only 5 per cent. Of the five percent only a small fraction is undertaken on the African continent and of that fraction the biggest role is played by expatriate advisers and scholars.^{167a}

On the other hand, the political, economic and social changes taking place in Africa indicate that the solutions to development problems will call for greater research in which the Africans take a considerable part. Statistical data and other research information need to be collected, analysed and supplied by all the disciplines which engage in the study of man and his environment. This will necessitate the employment of extra personnel and the expenditure of public funds which the African Governments have hitherto failed to contemplate. The tendency of most African governments has been that the developing countries cannot afford to pay for research which is regarded as a luxury for the developed countries. This attitude prevails notwithstanding that the basic policy which is currently advocated in Africa is economic development - a policy that relies heavily on research findings. However, the attitude must be seen in the context of social and political instability that prompts the governments to be suspicious of research methods that allow researchers to have direct contacts with the people. Priorities in Africa have continued to be the legitimisation of political power, the problems of subversion and nation-building and the eradication of hunger, disease and ignorance. These are problems which call for immediate solutions.¹⁶⁸

On the other hand, any research is bound to be prolonged with no possibility of yielding immediate solutions - hence the relegation of research as a secondary priority in development. This is one of the reasons why the bulk of research on the continent has been and continues to be done by expatriate scholars who manage to obtain research funds and support from sources outside Africa. At the same time, whenever the governments wish to initiate some development policy they find themselves forced to resort to the use of the research findings with little appreciation

of the defects and distortions that may be contained in them.

The reasons for doing research have already been noted.¹⁶⁹ The Executive Secretary of the Economic Commission for Africa, an African himself has observed,

"Basic or fundamental research leads to an enrichment of knowledge and to the discovery of new development possibilities, and better ways of utilizing existing resources. It also facilitates better understanding of technological processes. Thus, the knowledge derived from basic research forms the raw material out of which an understanding of the problems of applied research can be derived. Applied research, including adaptive research, enables knowledge and techniques to be imported, and adopted to local conditions."¹⁷⁰

It is only recently that the East African Governments have begun to appreciate the importance of research for their development policies and planning. The new appreciation is evidenced by the creation of National Research Councils to co-ordinate research efforts in the region.¹⁷¹ Before the establishment of the Councils, research in East Africa was in a chaotic state. There were so many research departments, institutions and organisations carrying out research projects, sometimes of a similar nature that often it was difficult to know what was being researched into, by whom and for what purpose. A number of scholars and a great deal of money were involved in small fields of research whose value was questionable. For example, at one time the Kampala City Council, the Department of Town Planning, the Institute of Social Research, the Department of Geography, Sociology and Law at Makerere and a United Nations Mission, were each and independently engaged on similar research in the urban and rural areas of the City of Kampala and none knew what the others were doing until 1971 when an inter-disciplinary conference on development

planning was held in the Kampala International Conference Hall.¹⁷² Of the expatriate scholars doing research in East Africa few have published their findings locally or deposited copies of their research papers in East Africa. The objects of the National Research Councils are not only to co-ordinate research and control national research funds, but also to examine individual applications for doing research and grant or refuse research permission depending on the viability of the research and its probable usefulness to the country as a whole. The Council is composed in such a manner as to represent most disciplines including planning, engineering, economics and law. The membership of the Council includes representatives from Government departments, educational institutions, social organisations and members of the public.¹⁷³

There has been much tentative research and writing about the economic and social needs in East African development. Rather than being all-embracing and systematic, the research has been limited to isolated areas and topics of development. It has tended to be sociological and anthropological rather than pragmatic, developmental and practical.¹⁷⁴ This kind of research has been particularly popular with one kind of expatriate scholar. The scholar has been more concerned with the discovery of facts and behaviour to accord or contrast with the established theories of sociology and anthropology as seen in the country of his educational origin and less with applied research and discoveries relevant to the local conditions and circumstances. Much of the writing available is based on tribal and sectional behaviour and little of it pertains to the national level. Consequently, the value of this kind of information and analysis is limited. One needs to look at the bibliographies of recent books and materials written on African development to appreciate what has been done, how and by whom.¹⁷⁵ Admittedly,

some of the work is relevant and forms an excellent foundation for further applied research. However, a great deal of the rest tends to be superficial and speculative.

One of the main criticisms levelled against this kind of research is that the researchers have often been guided by a strong desire to be appreciated by readers in the developed countries rather than by a sincere mission to assist in the solution of the problems of the developing world. A considerable number of the writers will be academic scholars in search of higher degrees under the supervision of professors residing in the countries of origin with little knowledge and time to appreciate the problems faced by the scholars and the people about whom they are writing.¹⁷⁶ In some cases the local people did not know that any kind of research had been undertaken until they read the results in some learned foreign journal. Perhaps this is inevitable considering that the bulk of the money spent on research in Africa is obtained from the developed countries. A number of scholars may go to Africa without sufficient instruction in the methods of research that may be most acceptable, and therefore effective, in respect of the local people. Inevitably, wrong questions are asked and research subjects are approached in a manner considered to be taboo by the local population.¹⁷⁷ The result of such indiscretions might lead to inhibition and suspicion on the part of the people. Mistrust leads to the obtaining of wrong answers and the misinterpretation of the facts observed.

In his "A Housing Survey in Mombasa" Stren has revealed an interesting study of the behaviour and attitudes of the residents in the area. One of the questions asked in his survey was whether or not the residents

regarded Mombasa as their home. After analysing the answers Stren concluded that more than half of the residents did not consider Mombasa as their home. On the basis of this analysis, a town housing planner might be led to believe that only less than half of the residents might need permanent homes in Mombasa. However, this belief would have to be based on one important assumption, namely, that the research conclusions had made allowance for the fact that to most East Africans, 'home' is not simply the place of permanent residence but the place where they were born and brought up or where their ancestors were born and buried. Stren comes from a country where the notion of home is different and his survey analysis does not indicate that he was aware of this point.¹⁷⁸

The defects in research findings are increased by the fact that many of the researchers spend a comparatively short period on their chosen projects of research. While it may be said that the majority of the experts who do research in Africa are prompted by good intentions and the desire to assist in the development of the host countries, the little time available to them does not permit a full appraisal of the situation. The Economic Research Bureau of Dar es salaam¹⁷⁹ was set up to gather and collate research materials and evidence to aid the Government and other public authorities in the planning and development of Tanzania. The Bureau has a staff of 50 members, 11 only of whom are Tanzanians or other Africans. Four of the Africans are employed as mere assistants to the Bureau to carry out tasks of a routine nature. The

Bureau's annual report of 1970/71 showed that since 1966 there have been some 310 major and minor publications dealing with or relevant to planning and development in Tanzania. Of these publications, only some 48 papers are accredited to Tanzanians or other East Africans. The report revealed also that the average period which most of these expatriates spend in the country is two years and in some cases this period is less than one year. It is therefore arguable whether a period of two years or less is sufficient to enable any stranger to study and appreciate the needs of a people he has met for the first time. Undoubtedly, some of these publications are valuable as compilations of empirical data for planning and development purposes. On the other hand, the majority of them can and have been criticised as being insufficiently evidenced and as having been written in a hurry under various misconceptions and preconceived ideas of planning and development as related to the East African situation.¹⁸⁰ The Bureau's report also shows that the Tanzanian Government and parastatal bodies regard its work as most valuable and have tended to base their policies on its periodic publications.

In his Retiring Note to the Minister of Finance, Huddle, an expatriate senior civil servant who had been in the Colonial service for over 20 years, said,

"I think more and more Government Departments are now coming to the conclusion that we have gone in too freely for what are often incorrectly called experts from outside to help us with our problems. They have many possible disadvantages. As soon as an expert is known to be coming all the difficult decisions connected with his inquiry tend to be postponed. After he arrives the expert consumes much time in gathering his local knowledge. Too often his report is hastily prepared and does not take due account of local realities."¹⁸¹

However, not all civil servants may be prepared to criticise others whose work they regard as insufficient. When a Ugandan teacher complained that at the only Ugandan Technical College, "the expatriate decides what courses are suitable, how they shall be taught and run and who shall teach them while the Ugandan merely teaches the courses already prepared for him", the Permanent Secretary to the Ministry of Education, a Ugandan, lamented that in the sixth year of Ugandan Independence some people continued to regard expatriates as strangers coming out from the moon and whose presence was for no other purpose but to hamper the progress and advancement of the indigenous people. The Principal of the College an expatriate, found himself compelled to join in the controversial correspondence. He explained,

"Africans are very impatient. Some of them fail to realise that one needs experience as well as a degree, in order to be an effective teacher."

It seems that both the Permanent Secretary and the Principal misunderstood the argument of the correspondent which was that courses at the Technical College should be based on the needs of the country and for this purpose the inhabitants should have some say in how the courses are to be designed. It was unfortunate that the correspondence on the subject in the 'People' newspaper did not continue long enough for someone to ask the Principal how one can acquire teaching experience without actually teaching.¹⁸²

Insistence on 'purity' of research and the necessity to produce a sufficiently academic publication are some of the reasons why scholars operating in Africa fail to consider the relevancy and practical nature of their research investigations. Writing on "Some Human Aspects of

Manpower Planning in Developing Countries," Thomson asserts,

"Again the new national university will inevitably offer from the outset faculties of Law, Economics and Social studies, but will take time to offer any fully developed degree course in the Sciences - the very subjects which will be in greatest demand both immediately and for decades to come Again there is the danger that academic qualifications will, from the very thirst of knowledge, develop into an end rather than a means."183

It is for this reason that the Governments of East Africa have reluctantly decided to have some say in what courses shall be taught at their universities and to insist that in future the university administrations will be guided by manpower requirements of the countries.¹⁸⁴

The three Universities of East Africa have within the last decade established research centres to investigate problems of planning and development but unlike the first degree programmes, these centres are dominated by expatriates in both staff and students.¹⁸⁵ Indeed, if one examines the questionnaires prepared for the National Research Councils and intended to disclose information about prospective researchers in East Africa one is led to the conclusion that all the envisaged researchers are to be expatriate.¹⁸⁶

Another criticism that has been made against research publications produced by expatriate scholars is that they tend to overgeneralise about the problems of African development. Often the research project is based on one section of the community but the findings are applied generally to the whole country, and, in some cases, to the rest of Africa without allowing for any margin of error or variation. In the field of law, for example, Allott's "African Law" has been criticised on this ground by Obol-Ochola thus,

"But it would seem doubtful if this definition could be claimed as representing the true nature and characteristics of ownership of land in the traditional African customary tenure..... He thus assumes that among the Africans there is no certainty on the question of who owns the land. This seems to be a misleading and unjustified assumption." 187

Happily, Professor Allott himself seems to be fully aware of the shortcomings of his generalisations for he concedes that they are not intended to be universally valid for all times and all places.¹⁸⁸ There are others who do not consider any invalidity in their generalised observations.¹⁸⁹

Johnstone Muthiora has drawn attention to those expatriates who still view the Africans in the context of circular migration - The African move to the town to work and save money and then return to settle in the village permanently - which he regards as extinct but also as having contributed to the lack of proper planning in Africa.¹⁹⁰ Gitelson has pointed out the inadequacy and inaccuracy of the statistics provided by researchers in Africa.¹⁹¹ Professor Ghai has directed attention to the danger of preconceived notions and principles in doing research for the development of Africa.¹⁹² Smith speaks of

"The inclination of some lawyers to view "development" needs (and the resulting law jobs) largely in terms of central planning and industrialization, that is, in terms of what is needed to bring African societies to the state of Western Societies..... Once this premise is established it is argued that the institutions supported by the customary legal system are impediments to development." 193

Smith concludes that recent studies have suggested that the extended family in developing countries may play an important role in both capital accumulation and the co-operation needed in organising and operating small businesses. He advises that the time has come for lawyers to

shake off a number of catch-phrases, models and assumptions which have tended to shape their thinking about modernization, urbanization and development. But it is not only lawyers who are worried about stereotype models. Mr. Archie Mafeje of the Economics Department at the University of Dar es salaam has scathingly criticised the standard economic theory designed mainly by Western-oriented economists for the under developed countries. The theory which he criticises starts from the basic premise that all these countries have in common a certain desirability called "dual economy". Continuing his criticism, Mafeje observes,

"Since its introduction in 1953, leading Western economists such as Lewis, Higgins, Fei, Hirschman and many others have sworn by it. Young economists (in the developing countries), despite the changing ideological perspective, continue to use it unquestioningly." 194

One of the exponents of the dual economy is Dr. Seidman whom Mafeje criticises for minimising the contribution to the economy which the subsistence sector of development brings. Mafeje observes that when one begins with a pre-conceived idea about development one's own model determines one's selection of facts and the interpretation to support the models. It is perhaps inevitable that in planning development one must begin with a model. It is not the model per se which is criticised or the fact that it has been used at all. What is questionable and what is important is the manner in which it has been used and the evidence available to support its adoption and the rejection to consider other equally adoptable models. For a planning scheme which has worked successfully in one country to apply to another country there must be satisfaction

that the development problems, the social, political and economic conditions and the demographic data of both countries are more or less indentical.

In his article "Urbanization and Social change in Africa", Epstein has remarked that most of the detailed studies of urbanization and urbanism in Africa to date have been made by social anthropologists. He then proceeds to analyse the writings of a number of them and identifies the misconceptions and defects made therein. He points out the fact that writers do not always agree as to what is urbanization, urbanism and development in the context of Africa and that their findings and conclusions, though general to the continent, are remarkably dissimilar. He concludes,

"Yet, as our knowledge of African urbanism accumulates, it also becomes clear that such formulations do less than justice to the complexity of the phenomena, and can lead to all obscuring of certain important problems calling for analysis." 195

Epstein's article provokes no less than 10 subsequent articles criticising, appraising and pointing out defects and misconceptions in his own arguments and conclusions. Perhaps the debate following his article sums up the dilemma that faces researchers on urban planning and development in Africa. It also reveals the fallacy of using research findings and recommendations without any further examination.

It would be wrong to castigate foreign researchers in Africa without pointing out some of the redeeming features of their work. Not all the scholars and writers have been indifferent to the local problems and circumstances. Those who have worked and written in the post-independence era of African development have shown a particular commitment to the advancement of the continent. There have been some who recognise and

appreciate the special needs of the local people and who have devoted their entire researches to finding the right solutions. Some of these have been ready to criticise many of their fellow expatriates who did not care about the local problems. Charles Abrams, one of the most prolific writers on housing in the developing countries has regretted the tendency in some of the countries

"to copy the complex codes of England, Germany or the United States as well as their zoning and planning laws, though they are irrelevant and although the talents to enforce, construe and adapt them may be completely lacking." ¹⁹⁶

Professor McAuslan has noted and regretted the lack of appreciable contribution of lawyers to East African development and has made a plea for change in the attitude of the legal profession towards the problems of development. ¹⁹⁷ Professor Twining makes similar remarks in East African Law Today. ¹⁹⁸ Colin Leys has suggested that the touchstone of what is taught in the University of the developing country ought to be its bearing on the understanding of the predicament which under development represents. This sentiment is re-echoed in President Nyerere's 'Freedom and Socialism' when he asserts that university scholars cannot pursue pure research and knowledge for its own sake without neglecting other functions which are for the time being more important. ¹⁹⁹

There have been others who have shown total commitment to the cause of African development. A considerable number of them have been involved both professionally and emotionally. They have identified themselves with the African and his problems. ²⁰⁰ Among these may be mentioned the research teams operating from the Universities of East Africa. They have collected

and analysed empirical data that has been so useful in a number of development schemes and projects. Professor Webster, lately of Makerere University had to abandon the comforts of his Faculty office to lead a team of researchers in the field. Sometimes he stayed and lived rough for weeks and months in the research areas. A number of his expatriate colleagues at the University may have viewed his zeal and commitment with apprehension and amusement but there can be no doubt that those who have read the publications of the team appreciate the positive contribution to knowledge and indirectly to development.²⁰¹ There are two advantages in this kind of commitment. The research findings become credible to those who are in a position to use them and credibility is the one thing that is often lacking in evaluating research undertaken by a foreigner. Secondly, the expatriate who instructs a team of indigenous potential scholars to accompany him in the field instead of gaining solitary honours by doing it alone, is planting the seeds of future research which may be nurtured after his departure. Unfortunately, the expatriate who shows this kind of commitment is rare to find and when found may be unimpressive to other expatriates who curry favour with the local authorities likely to decide the fate of his research findings.

ADVISERS

Recent studies in development have revealed acute shortages of funds, materials and planners in Africa.²⁰² Studies like Urbanisation and Development in Africa South of the Sahara, Problems of Foreign Aid and the series of seminars held by the United Nations Commission for Africa have compiled information and analysed the problems of development which are peculiar to that continent.²⁰³ In 1964 a conference was held in Dar es Salaam to review foreign aid and development in East Africa. The information which was disseminated to the delegates showed that the region lacked so much in indigenous development agencies that it relied heavily on foreign aid, experts and materials. The conference noted that all the East African development plans assumed a very heavy reliance on foreign monetary funds ranging from 75 to 90 per cent. It also noted that well over 70 per cent of its planners, technologists, senior administrators and managers, all carrying out considerable responsibilities of policy, planning, finance and development, were expatriates. It also noted that while the number of expatriates in the lower ranks of the civil service was diminishing in countries like Ghana, Nigeria, Kenya, Zambia, Tanzania and Uganda, the reverse was true with regard to high level ranks of planners and managers.²⁰⁴

The conference at Dar es Salaam was attended by high level planners and administrators as well as academic personnel representing the 3 East African states. Of the 60 delegates who attended only 13 were indigenous East African citizens. The remaining 47 delegates were expatriates. The conference held 3 working groups and these were presided over respectively by a British national, an American and a Russian. The conference had 22 working papers, all written by expatriate advisers.

Only one paper showed that an East African had been its co-author. The circumstances and conditions prevailing in the region would seem to suggest that techniques of development should reveal distinct departures from those applied in the developed countries of the West. However, through heavy reliance on expatriate advisers those departures are few and far between. Most development schemes appear to be replicas of what is applied to the developed countries. Once the policy-maker has indicated the general objectives of development it becomes the task of the expert planner to initiate, formulate and finalise plans and schemes which will best promote the intentions of the policy-maker. Planning is a specialised technique requiring the ability to analyse the policy and to relate it to the demographic and economic data of the region planned. Equally important is the examination of the political and social structures of the community to which the policy is to apply. It also involves the examination of alternative choices in development projects, the means of carrying them out and the capacity to cost them in terms of finance and personnel. The planner determines and suggests the tools with which to achieve certain norms of development and forecasts the consequences of the projects stated in the norms. The means and forecast may be provided by the economist, the infrastructure be proposed by the administrator, the mechanics of operations may be the responsibility of the technologist, and the sociologist may examine the social consequences of the policy and the plans, while the lawyer is called upon to discuss possible methods of enforcement and to draft the necessary legislation. For these reasons it is pertinent to describe and evaluate the people who have been and continue to be responsible for planning and development in Africa.

Planners in developing countries tend to be foreign experts loaned

for the purpose through either bilateral aid agreements with foreign governments or through the United Nations specialised agencies.²⁰⁵ Often the experts come for short-term periods of operation and invariably they make their recommendations before they are fully conversant with local conditions. Few of them have sufficient knowledge of the background to governmental policies and fewer still appreciate the national and local politics or the social consequences of any given plan. On the other hand, as we shall see later, the influence of these experts on the national leaders and local planners is so great that often their suggestions are accepted without much opposition. In some cases, the plans they "sell" to local leaders and bureaucrats are likely to be replicas of plans existing in their own home countries or of those they have sold elsewhere or indeed, of theoretical ideas of their own imagination which have not been tried elsewhere. Some of these plans may work well or prove relevant to a particular country and criticism may be unimportant unless it can come up with realistic and alternative programmes or can evidence disastrous results. Be that as it may, there is a considerable body of opinion that thinks towns in the developing countries have often provided areas of experimentation and a field for trial and error for international urban planners and experts.²⁰⁶

In the East African states the most important Ministries are those of Economic Planning and Finance or their equivalent. They are the Ministries which recommend and co-ordinate planning schemes for the approval of the Cabinet. Experts from the two Ministries meet jointly in the Planning Commission which is the final authority for considering plans before final approval by the government. Any plan or scheme, whether economic or social, national or regional, urban or rural, must have the approval of this Commission before it can be

proceeded with. Inevitably, every department which wishes to convince the Commission of the feasibility of its plans must not only show that the plan is economically viable but also that the department has had the advice of internationally renowned experts. Hence, before submitting its report, a department is likely to have convinced its Minister or Head about the desirability of having expert opinion as a supporting aspect of the departmental policy. The experts invited will have made specific recommendations and given detailed plans of how the proposed policy should be implemented. It is worthy of note that since independence, the two Ministries or their counterparts in East Africa and the Planning Commission have continued to be dominated by expatriate economists, planners and statisticians.²⁰⁷ The fact that they are expatriates is not and should not be the basis of criticism. The criticism is that they stay a very short time in the country before making far-reaching proposals for planning and development. Often, it is not so much the plans they produce but rather the reputation they enjoy in their respective countries as experts which weighs with the appropriate public authorities who invite them.²⁰⁸

Two extracts from studies made about planning may be given to illustrate the value of the knowledge of local conditions and the effect of the lack of it in planning. Commenting on the Plan presented by the Greater London Council on the one hand, and the objectors to the same Plan, on the other, Donald Haggan says,

"The persons who are present on behalf of the G.L.C. have lived with the G.L.D.P. (Plan) full time for months or years. And they are only the top of the iceberg; hundreds of persons on call for the G.L.C. are better informed about the G.L.D.P. and its rationale than any objecting witness could be. The groups appearing at the inquiry are of all sorts - governmental or quasi-governmental bodies, planning and amenities groups, developers and so

forth. England is highly politicized by voluntary associations concerned with planning and amenity."209

Admittedly, London is one of the three largest capitals in the world and is entitled to attract the concern of its experts and residents when its future development is the subject of a public enquiry. It is equally conceded that perhaps none of the small English provincial cities would experience the same rigorous procedures and attract the same number of people at the hearing of its planning proposals. However, none of them, or any town in the developed countries is likely to be treated in the same way as towns in the developing countries are often treated.

Commenting on the latter, Fred Riggs has said,

"Alien models are deliberately and sometimes even vigorously thrust upon local policy-makers by foreign organizations. The United Nations and its specialized agencies, as well as the United States... and other bilateral aid programmes, provided the funds and resources for such efforts. The possibility of obtaining foreign aid (with its three P's: participants, paraphernalia, and posts) readily tempts decision-makers, especially when they are not subject to strong domestic counter-pressures, to adopt the foreign models."210

Thus, many of the aid programmes will insist that the money given must be used to build houses of certain specifications and engage a certain number of experts from the donor government or organization. In one classic case, a United States Fund Foundation donated money to an African government for the construction of students' residential halls and among the conditions of the loan were the following: that certain materials had to be purchased from the United States notwithstanding that there were local materials available at cheaper prices, and that

the halls had to satisfy certain architectural designs of the Western universities.²¹¹ Elsewhere multi-storey buildings have been constructed through the dictates of aid agreements when perhaps single units of buildings would have accommodated more people and certainly demanded lesser prices. Houses have been built with fireplaces and chimneys in spite of the fact that such amenities are unnecessary in a tropical climate.

Some of the aid programmes are intended to further political or military strategic interests of the donor countries. Dr. Andrew M. Kamark of the World Bank has observed,

"Probably only the international and multilateral aid programmes can be described without reservation as being wholly devoted to economic development. They are unlike the bilateral programmes which often stress promoting the sale and distribution of their products abroad by tying aid. This frequently means that the developing country does not have a chance to choose the most suitable and least expensive goods on the world market, nor to encourage its own import-substituting industries."²¹²

The East African Conference on the "Problems of Foreign Aid" noted,

"It was nevertheless felt that strong political strings have been attached to some proposals in East Africa and that on occasions aid has had to be refused for this reason. More subtle but perhaps less significant influence may be exerted on social and political policy through recipient countries working out their plans with an eye to meeting the requirements of prospective donor countries. Foreign assistance may thus lead to 'plan distortion'!"²¹³

As already mentioned, much of the evidence on which the planners base their proposals for development is collected by expatriate researchers with little knowledge of the local conditions and circumstances. A

combination of the errors in empirical data and conditions in the aid programmes may result in a distortion which is out of character with the needs of the people. A former Uganda Minister of Foreign Affairs once said that many of the experts sent to developing countries have little knowledge of the countries' problems and they often go with preconceived ideas on how best to deal with them, and that the work they carry out is often unnecessarily academic and does not take into account the realities and urgency of the needs of the people. Aid distorts priorities and nullifies the whole rationale of planning. Much of what the Minister said has been observed and analysed by a number of writers who do not substantially contradict his statement.²¹⁴ Gitelson points out the inadequacy and inaccuracy of the statistics. Dr. Obote, the ex-President of Uganda, was worried about the lack of understanding among expatriate advisers, of the needs, motivation and aspiration of the people and the government.²¹⁵ One of the difficulties which confront the foreign expert attached to an aid programme is the lack of communication between his office at the scene of operations and the donors or principals. It has been said that the process of approving recommended projects sometimes takes as long as three years and often two years after they are first submitted.²¹⁶ Even after approval, similar periods of delay may occur before the operational phase begins because of prolonged negotiations on what exactly is to be done or because of pro-recruitment difficulties. In the meantime, the local planners wait impatiently for their foreign experts to arrive and any ideas of their own they may have had are shelved because the matter is no longer in their hands.

One of the consequences of engaging foreign experts in planning is that the country concerned relies less on its own local personnel.

Often, and as soon as a donor institution or government has expressed interest in a particular project, the policy-makers in the receiving country who are not necessarily conversant with the particular project, make immediate preparations to receive the donor's experts and equipment without first evaluating their own local resources.²¹⁷ The arrival of the experts is followed by an intensive but brief encounter with the problems to be solved. The main discussions tend to be limited to the offices of the policy-makers. Little consultation is had with local experts and the experiences of local planners are usually taken lightly. The main preoccupation of the experts is likely to be the discovery of who has the authority to approve their ideas rather than who is most likely to assist them in gathering local information and evaluating local conditions and circumstances. It is only rarely that local opinion about the proposals is sought.

It may be useful at this point to give some illustrations of the manner in which foreign panels of experts have been advising and planning for the development of the East African towns. The illustrations are taken from mission reports which made plans for both Nairobi and Kampala. A contrast is made between pre - and post - independence missions. In 1948 the Municipality of Nairobi invited a panel of three experts from South Africa to prepare a report and produce a Master Plan for Nairobi. From the beginning the team's objective was to

"deal with the major planning issues which confront the colonial capital. It seeks to analyse the 'Nairobi Problem' and to formulate principles for its solution, which in a wider context may point

to characteristic development problems of similarly-placed young multiracial communities. The Nairobi Master Plan is conceived as a key plan to the general, physical, economic and social development of Nairobi over the next 25 years."²¹⁸

The report shows that the team made three visits to Nairobi, each of which was of less than three months' duration. The team devoted itself to a study of the layout of the town and analysis of its social structure. They are supposed to have interviewed at length the local personalities and to have learnt to appreciate their viewpoint. After some weeks apparently the team split up for each member to pursue the problems which concerned his department most. Of the sociologist's report a commentator in a UNESCO publication has said,

"The report is not what one would expect of a social survey but is a brief, more or less journalistic description of the history and population of the town. It is of interest here as a background to the other two reports of Nairobi which concern special aspects of urban life."²¹⁹

The report gives the breakdown population of Nairobi as in the proportion of 1 European to 3.4 Asians and 6.5 Africans in a population of over 100,000 inhabitants. The team gives acknowledgement to 92 people who are specifically named as having been consulted. Of these none was African, five were Asians and the remainder Europeans. It is no wonder that the team concluded,

"The town if it is of importance will be European in style and have international connections, banks and businesses' houses will use it for their headquarters."²²⁰

One of the most important policies in which the former civilian Government of Uganda was interested was the industrialization of Kampala.²²¹ The decision to advance this policy was reached as early as 1964. The Government approached the United Nations to assist in the realisation of this policy and among that organisation's projects operating in Uganda was the Small Industries Development Programme. The project was supposed to have four major functions. First and basically it was to develop small industries and to establish an industrial estate in the Kampala area to operate as a "nursery" for Uganda small businessmen. Secondly, it was to provide studies and evaluations for both the Government and the private sector of industry. Thirdly, it was intended to provide engineering services outside Kampala. Fourthly, it was to set up a credit organisation to enable the small businessmen to obtain equipment needed for their development projects provided that the United Nations International Development Organisation approved. The project was to be operated by 7 United Nations experts and 7 Ugandan counterparts as well as 26 Ugandan non-professional personnel. After 5 years it was hoped that the Ugandans would take over the complete management of the project.²²² Thus, on paper the scheme appeared to be a comprehensive one and both the Ugandan Government and the United Nations experts in the country proceeded to make preparations for the initial operations of the scheme.

Although the scheme was originally scheduled to begin in 1965, it did not become operational until July 1968. By that time the Uganda Government had in theory become committed to socialism as a new ideology of development.²²³ This commitment had the effect of depriving the scheme of one of its main objectives, namely, the training and financing of Ugandan small capitalists. The delay was caused

apparently by the Ugandan authorities' involvement in the 1966 constitutional crisis²²⁴ but also by the failure of the United Nations International Development organisation to find suitable experts. Another problem was that of selecting a suitable site for the project.²²⁵ Originally, Nakawa, a suburb of Kampala, was chosen but when the project manager arrived he found that this site was situated in marshland and was too uneven to accommodate workshops. This site had been chosen by the original experts who were unfamiliar with local conditions and who lacked the necessary time to carry out a physical survey of the area. The project manager entered into negotiations with the Department of Regional Planning to have the scheme moved to another site. Ntinda, an area which was considerably further away from the road service network of Kampala and which on the Master Plan of Kampala had been designated as residential, was eventually selected. The new site would thus lead to transportation problems and would be developed contrary to the zoning regulations of the city.²²⁶ The then Minister of Commerce and Industry regretted the delay,

"My Government have been particularly keen to see the project started at an early stage of the Government's industrial development efforts in this country. That is why we have been taking all budgetary measures during the last two fiscal years in order to meet the requirements of this project."²²⁷

At the time of the Minister's statement the only tangible accomplishments of the project were the appointment of the project manager and the selection of the site. Originally the project was expected to be co-ordinated by two U.N. agencies, namely, the U.N.I.D.P. and the I.L.O. The latter has an established sub-agency in the country known as the Management

Training and Advisory Centre. Unfortunately, no co-operation existed between the heads of the two agencies. According to Gitelson, the I.L.O. is an old establishment dominated mainly by Europeans whereas U.N.I.D.P.²²⁸ is relatively new and was set up to the urging of the developing countries which wanted more encouragement for and control over the industrialisation of their areas. I.L.O. has tended to stress management and labour relations as well as personnel training while U.N.I.D.P. is more concerned with establishing industries. In an interview with the Director of the Management Centre he expressed the view that the project was a waste of funds and that he regarded priority in the developing countries to be the establishment of sound labour relations and management training. He regarded it as futile for anyone to establish industry before one knew what labour and management one was going to have.²²⁹ It is therefore a matter of conjecture as to how much co-operation this particular director would have given to the project manager. By the time the coup d'etat took place in Uganda very little had been achieved by the scheme.

By and large, African bureaucracies, particularly in the areas of planning and development, continue to be dominated by expatriate senior advisers. Of the African countries only Tanzania has been recognised as pursuing the true road to African socialism and the principles of self-reliance.²³⁰ Yet a glance at that country's administrative structure shows that the foremen constructing that road and the advocates of the principles of self-reliance are mainly expatriate advisers.²³¹

Recently, the Tanzania Government created the Institute of

Finance Management in Dar es Salaam and appointed as its first director an expatriate. This new director has argued elsewhere that nowhere is Tanzanian dependence more obvious than in the field of economics.²³² He is quoted as saying that most major economic decisions are strongly influenced by expatriate technical assistants and that there is every indication that the next Five Year Plan will be as much a product of expatriate service as the last. Tanzania continues to import expatriate assistants who are incapable, because of their own training and beliefs, of imparting ideologies and setting standards other than those that Tanzania is trying to reject. The definition of African socialism in the context of Tanzania has continued to depend on the teaching philosophies of the expatriate staff at Dar es Salaam, among whom there is Walter Rodney, a Guyanese-Jamaican whose current best-seller is "How Europe Underdeveloped Africa."²³³

Currently, the personal Assistant to the Tanzanian President, for Economic Affairs, is Professor K. Svendsen of Denmark. Dr. Idrian Resnick, an American, is the chief Economic Adviser in the Ministry of Economic Planning while Dr. R. Green, another American, is the chief adviser in the Department of the Treasury.²³⁴ The situation is more or less the same in Kenya and Uganda. The Department of Planning in Uganda is staffed largely by a mixture of professional experts from Britain, some other Commonwealth countries and several East European countries.²³⁵ Moreover, a number of development projects currently operating in the towns are managed and directed through aid programmes either initiated in those countries or run by the United Nations specialised agencies.²³⁶ It is not unusual for these experts, representing as they do different disciplines, cultures and ideologies, to disagree.²³⁷ They are further handicapped by the short periods they

spend in these countries. Although most of them, if not all, have all the good intentions to assist in the development of the host country the little time available to them does not permit a full appraisal of the situation.²³⁸

CONCLUSION:

A number of points emerge from this discussion. Firstly, there is a lack of administrative machinery capable of formulating, co-ordinating and directing development policies. Secondly, the existing researchers, advisers and planners have not shown vivid imagination and originality, but instead have continued largely to introduce carbon copies of the blueprints of the developed countries. The schemes of development have tended to assist the high-income groups of African societies while the low-income categories continue to fend for themselves. Thirdly, the infrastructures of planning and development have not been rationalised and this leads to wastage of manpower and funds. Fourthly, in choosing economic planning as a priority which places emphasis upon maximum utilisation of material resources, social development, which places maximum emphasis upon the growth of human endowments, has continued to lag behind. Admittedly, the two are linked in the sense that it is almost impossible to realise social development without economic advancement. However, if the contention that the latter is a means for which the former is an end is accepted then the overriding and ultimate objective in development should be the alleviation of human misery rather than the balance of national payments or the construction of grand projects. It is worthy of note that the United Nations Bureau of Social Affairs has been a little more successful in this field. Since the inception of its Housing, Building and Planning Department in 1951, it has produced a number of results based on its studies undertaken in the developing countries.²³⁹ It has founded regional colleges and institutions to cater for regional interests. The

most important contribution of the United Nations has been its willingness to release its expert personnel, on short and long periods of time, to advise governments and national institutions on development projects. One of the reasons for the modest successes of the United Nations agencies is that their personnel are not directly identified with former colonial powers. Most African governments have rejected colonial institutions and legacies which were generously bestowed upon them on the attainment of independence by the departing colonialists. Perhaps it is only natural that they should see the ghosts of the colonialists in the expatriates who have continued to advise them after independence. It can be argued that the tendency nowadays is to accept aid and advice from countries which have no history of colonial empires - countries like Canada and those of Scandinavia. This phenomenon is not, by any means, peculiar to the continent of Africa. All the liberated colonial peoples have, throughout the world, and at all times, expressed some form of opposition to alien institutions and models. With the departure of the Romans, the English resisted the reception of Roman law in preference to their own 'inferior' Anglo-Saxon Common law and tribal customs. After the war of independence, the Americans abandoned many of the British institutions and created their own. Even those countries which, after independence, remained staunchly loyal to the British Crown, such as Australia, New Zealand, Jamaica and to some great measure, Canada, have developed and are proud of special institutions which reflect their own character as distinct from that inherited from the so-called mother country. Whether these institutions were political, constitutional, economic or social, the rejection has always been pronounced. At the same time it must be conceded that the impact of the colonial administrations upon these countries is always greater

than the nationalists are prepared to admit.²⁴⁰ It has been said that the obsession for change has led to a crisis of identity in Africa. The crisis arises not merely from the extent or rapidity of change but also from the fact that people tend to identify change only with the colonial period.²⁴¹ This creates a psychological discontinuity between the pre-colonial past and the post-independence era. A realistic approach to the subject of development must of necessity accept the hypothesis that African development has continued from time immemorial and the colonial rule was merely an involuntary break in the process.

On being asked why he had introduced television into the country when social services such as hospitals, schools and roads were extremely poor and inadequate, the then Minister of Information and Broadcasting in the then Uganda civilian government stated, inter alia, that every independent and sovereign state had a television service. At the time, his Ministry was staffed mainly by expatriate advisers of the administrative and technical grades.²⁴² From many of these examples it would be reasonable to deduce that behind every successful project of African development, every failure, every coup d'etat and every social upheaval, there is an expatriate adviser. It is perhaps only fair that a hopeful note should be left to the words of an expatriate adviser who has shown more commitment to African development than most:-

"Only when Africa is able to forge its own definition without having it handed down by the Presidents or subjected to exegesis by well-intentioned expatriates, will the continent be able to remove the shackles of dependence."²⁴³

PART III: REFORM OF URBAN ADMINISTRATIONS

The examination of urban administrations in East Africa has revealed defects and shortcomings which suggest that those administrations need to be restructured and reformed. Greater emphasis must be placed on finding the right kind of people to run the administrations and the contribution and performance of expatriate researchers and advisers may call for more control and evaluation. Although research is now controlled there has been a lack of appreciation on the part of the East African authorities of the need to involve local scholars in this field. There can no longer be any doubt that the economic, social and physical problems which exist in the East African urban areas are interlinked. Not only are they interrelated within any given area, but frequently there are common elements at both regional and national levels.²⁴⁴

In view of the shortages of finance, manpower and experience, centralisation of urban planning and administration is not only necessary but also inevitable. Even in the developed countries where these shortages may not be apparent the trend is towards more centralisation of urban administrations. In the United Kingdom, one of the earlier experiments was the creation of the Greater London Council which took over many of the functions that had been previously exercised by smaller boroughs.²⁴⁵ The new Local Government Act which came into effect in April 1974 has created gigantic Metropolitan Authorities to embrace a number of local authorities whose individual revenues, in some cases, exceed the combined national incomes of the East African States. In Yugoslavia, India, Mexico and Singapore the Metropolitan structure in

comprehensive planning is the rule rather than the exception. The Institute for Development Studies at Nairobi University suggested in 1966²⁴⁶ that there should be a metropolitan authority for Nairobi. The Authority was to be headed by an executive director responsible to an independent Board under the Mayor's chairmanship. The Board would consist of local and central government officials and elected members; commercial interests, trade unions, the university, churches, schools, tenants' associations would be represented. The Metropolitan Authority would be given wide powers of comprehensive planning and its director and his staff would be isolated from immediate political pressure. At the same time, the central Government's command of the funds, and the representation on the Board would ensure that the executive director was ultimately subject to democratic control.

The United Nations Working Group²⁴⁷ suggested an alternative to the proposal of a Metropolitan authority. They thought that a city manager was more adaptable to the conditions of the developing countries. The city manager who would be appointed and dismissed by the Council would have the responsibility of organising and running the city's administration. He would also prepare the City's budget for the Council's approval and be solely responsible for relationships between the Council and the City's various departments so as to avoid confusion and interference by individual councillors. For this purpose he would have the authority to appoint, discipline and dismiss all the officials of city administration. The council would continue to be responsible for the general policy, bye-laws and the adoption of the budget. The Institute for Development Studies believed that this alternative should be given serious consideration. The Institute saw the objects of either proposal as being "to ensure that professional knowledge is fully and creatively

used, to safeguard democratic control without encumbering efficient administration, and to emphasize integrated development planning."²⁴⁸ It is to be noted that whereas the former proposal emphasizes comprehensive planning, the latter concentrates on an efficient structure of urban administration. The proposals are not mutually exclusive. In fact they could both be adopted by one planning area with the executive director concentrating on planning and the manager confining his duties to the city government. However, the adoption of the two systems for the same area would prove expensive and would require extra manpower and finance. The circumstances of East Africa are such that the adoption would be impractical. It is therefore suggested that the executive director and the system proposed for him are appropriate for the three capitals of East Africa and the bigger towns like Mombasa, Arusha and in Uganda, the Mbale area.²⁴⁹ For the next big towns like Dodoma, Kisumu and Jinja, the system of a City Manager could be adopted but with the central planning authorities continuing to have the overall planning responsibility.

The third alternative can be discovered from the report of the Seminar on the "Role of Urban and Regional Planning in National Development of East Africa."²⁵⁰ The report made far reaching proposals for the re-organisation of urban planning authorities and could form the basis for new legislation. Among the models recommended the following would seem to suit the conditions and circumstances of East Africa: The Ministry of Planning and Economic Development whose normal statutory function is to prepare national economic plans would in addition have the duty of advising local and regional planning committees about the economic implications of their detailed plans. The functions of the Department of Town and Regional Planning would include the formula-

lation of a policy on urban sizes and urban growth patterns of the country as a whole and within each planning area in particular. The growth of urban centres is usually considered to set some powerful influences on the character and rate of development of the neighbouring areas. For instance, a dominant urban centre may "suppress or cripple developments in the outlying regions by 'over-shadowing' or 'sucking up', as it were, development potentialities; on the other hand, it may stimulate developments in those regions through the 'trickling down' process.²⁵¹ It is the department which may have the information and personnel to detect which of these effects are likely to occur in the future. The seminar also recommended that Regional and Local planning committees should be centrally organised and administered with the proviso that their memberships should have representatives from the region or locality and such representation should be based partly on regional and local appointed officials, elected members and nominated representatives of the local communities and interests. From time to time, technical officers from the Department of Town and Regional Planning should be co-opted into these various committees. The various structure planning models included in the report have been reproduced in the appendix.²⁵²

Whether or not any of the proposals are adopted will depend on the convictions of the Governments who have the power to take political decisions before any implementation legislation can be initiated. Governments may be reluctant to agree to the creation of giant planning bodies the control of which is uncertain. In 1964, a United Nations Team proposed the establishment of The Lagos Metropolitan Development Authority.²⁵³ As proposed, the Authority would have spanned both the federal authority's functions in Lagos and those of the Western Region in the suburban portions of the Lagos planning area. It would have taken over planning, construction and maintenance, land use control,

public housing, water supply, sewerage and drainage. Despite partial dependence on national and state grants and loans, the operating autonomy of the authority would have exceeded that of existing local government units in Lagos. It would have had greater budget - and borrowing powers. The team was of the view that the proposal was necessary for a number of reasons. They had found an absence of any governmental policies with respect to severe public needs that surpassed the interests and capabilities of local councils.²⁵⁴ There was lack of co-ordination among inter-related services and construction. There was also lack of communication between federal and state authorities involved in the urban area. After considering the same problems however, another advisory team in Lagos proposed the establishment of an elected Greater Lagos Council which would be a metropolitan general government extending beyond the federal territory. The proposals ran into difficulties in Lagos because the suggested relationships of the proposed organs to the federal and state authorities were vague. The opposition is likely to come from national parties, leaders and vested interests for purposes of patronage and local organizational support. However, it is hoped that in the one party systems like East Africa and where the Governments stress development planning, such opposition may be nominal. The leaders are assured of support because every candidate stands for the same party they lead and patronage and party support should not be as important as in the multi-party systems.²⁵⁵

The importance of having the right kind of planners in the developing countries can never be over emphasised. Consequently, in reforming the planning structures and re-organising urban administrations, the East African Governments should regard manpower as a priority of

the highest order. In view of what has been observed, it is imperative that the staff of planning and development agencies should be considered separately from councillors and administrators of urban authorities. Ideally, the powers of appointment, discipline and dismissal in respect of the former should not be subject to the whims of politicians and political considerations. They are employed in a professional and technical capacity and it should be on that ground alone that those powers should be exercised. In East Africa, the judiciary, education, the army and the police are regarded as being of special categories to necessitate governing bodies of their own distinct from those which govern other public services.²⁵⁶ In addition, the national policies emphasised in the region are those which relate to planning and economic development. Therefore there is argument for suggesting that the people who administer and implement this priority should be accorded a special recognition.

It is proposed that a new body to be known as the Planning Services Commission be instituted to exercise the said powers in relation to planning personnel, experts and advisers. The commission could be composed as follows:- The Permanent Secretary to the Presidents' Office who has knowledge of the objectives of the national Planning Commission, the permanent secretaries of the Ministries of Urban and Regional Administrations, Planning and Economic Development, the Director of Town Planning or equivalent, as members. To ensure local representation, it is also proposed that whenever the commission is considering a candidate for a particular planning area, the area's planning officer and the political head of the local authority or their representatives should be constitutionally entitled to sit on the commission. In addition, the commission should be assisted by the

services of a legally qualified secretary who will be able to advise it on the legal implications of their decisions and the rights of the persons who appear before it. It is also proposed that the Commission should be responsible for vetting any expatriate planners or advisers who may be invited by a Government department, institution or a local authority.

Finally, the role of local authorities in planning may be considered. It is clear from the picture emerging from this examination that local authorities in East Africa as presently constituted are ill-equipped to cope with the planning process demanded by the ever-increasing problems of urbanisation and the industrial development that is currently planned for the region. Neither the elective system nor the appointment system to local authorities has been utilised to bring competent councillors to local administrations. Aluko has posed the question that,

"Why do we put a dozen tailors and barbers and cobblers in charge of the very important assignment of directing the growth of an industrial town..... If we plead shortage of qualified men for putting a dozen men in a corporation where we know they are ill-equipped for the work entrusted to them, have we looked closely into the possibility of a single qualified and experienced man replacing all twelve?"²⁵⁷

Aluko suggests that one way out of the dilemma is to select a few people who are knowledgeable and experienced in one or the other of the professions associated with planning and put them in charge of planning for a city. He reckons that such a body though small in size

would be rich in quality; and given wide legal powers and the goodwill of the community may well be the interim solution to that part of planning problems relating to the membership of planning authority. One problem likely to arise in connection with such a small body of bureaucrats is how to control them and ensure that they plan in accordance with the wishes and needs of the people, or indeed to ensure that they do not become the tools of those who have the power to appoint and dismiss them. Again, if professional planning is separated from political administration it may be possible to direct and control their actions by providing that they will be subject to the elected bodies representing the people.²⁵⁸

Equally, it would not enhance the interests of planning to divorce local authorities from the planning process altogether. Sometimes the successful implementation of a planning proposal may depend on its acceptance by the community. The acceptance may be determined by the attitude of the local authority and that attitude may be favourable when that local authority participated in its formulation.²⁵⁹ The recommendation for the acceptance of a plan is more likely to be successful if it is made by the local representatives of the people than if it originates directly from the often impersonal bureaucrats of the central government. There are various local factors and conditions the knowledge of which is essential for a feasible plan and such knowledge may be only possessed by the representatives of the local council. Thus, the roles of local authorities in the planning process should be to provide representation on the proposed planning organs, to be the channels of communication between the planners and the people and to disseminate all the relevant information required for the formulation

and implementation of the plan. While local authorities should continue to initiate proposals for specific plans of their areas and to make representations to the decision-making organs of the central Government they should no longer have the power to override the decisions of the professional planners. On the other hand, the central Government cannot find all the necessary personnel to approve all local planning applications or implement all the planning schemes and development projects. It is therefore envisaged that local authorities will continue to play a major part in the implementation of specific plans and development projects. This part of planning and the functions to be performed by local authorities will be discussed later under a section headed 'Implementation of the Plan.'

It might be argued that the relegation of local authorities to a secondary position in the planning process is a negation of the principles of democracy and the superimposition of bureaucratic power over the representatives of the people.²⁶⁰ Against this argument, the following defence is made. With the development of a one party state in East Africa, and of a military government in Uganda, local authorities have ceased to be representatives of the people in the accepted sense of democracy and for this reason the argument is a fallacy. Local authorities to-day are mere agents of the central Government and it follows that in considering the planning of their areas efficiency should come before democratic principles. It has been said that the ordinary people have not reached the sophistication nor acquired the right to govern themselves. It seems that the only right they can claim is to be governed well by their Governments. Recently studies have shown that participation of the citizens in the urban planning process is very low in most cities of the world.²⁶¹ Moreover, this

phenomenon cannot be fully explained by lack of opportunity. The studies covered all different kinds of cities in developing and the developed countries and a number of those cities belonged to some of the most democratised countries of the world. Thus, Walsh observes,

"There does not appear to be a reservoir of popular enthusiasm, awaiting only the institutional means of expression, be these local elections or participation in boards, committees, and meetings. Officials in those cities that have explicitly attempted to increase direct citizen involvement- such as Leningrad, Karachi and Zagreb- have discovered that considerable effort is required to induce people to serve on committees, to form opinions on local issues and to hold their elected representatives responsible for improving conditions of urban life..... The traditional belief that local government is particularly conducive to broad democratic participation may well bear re-examination." 262

On the other end of the scale there are professional planners who believe that the involvement of non-planners in the planning process for the sake of appearing democratic is a wasted effort.²⁶³ It is contended by these people that non-professional people do not understand the techniques of planning and their presence delays the process and leads to wastage of funds. McLoughlin²⁶⁴ has attacked this attitude thus, "A good deal of nonsense has been uttered in the past about planning being a job for a team of specialists or words to that effect. In one way, the statement is superfluous, inasmuch as this is true of any complex job. But the tone of such statements implied that the skills which had been drawn into planning over the years and they alone could provide teams, of varying composition to do all the different kinds of planning jobs called for. How could anyone, even after the best sort of education, simultaneously oversee the operations of an architect, a sociologist,

a landscape designer, a geographer, an engineer and a host of others, like some preposterous puppet-master? These and similar questions were based on a fundamental misunderstanding. It arose from the failure to define the planning process and the systems it sought to control."²⁶⁵

Despite this and similar criticisms, there remains a significant number of professional planners who regard the participation of local authorities' representatives and of the public as being, at best irrelevant and hazardous and, at worst, obstructionist. To this end their attitude might very well be that if the public are apathetic to the planning problems it is not part of the professional planner's duty to strive hard in seeking public participation in order to be obstructed by it.

Two other points need to be mentioned, namely, planning education and the tightening of staff regulations that govern urban planners and personnel. With regard to the first, there exists a number of small urban centres in East and West Africa as well as North Africa which are designed to train manpower.²⁶⁶ In the majority of cases these have been survey schools and institutions concerned mainly with physical planning and they have tended to produce sub-professional personnel. The other type of training has been the apprenticeship system whereby school leavers join practising planners with the notion that after a considerable time of being on the job, as it were, these apprentices will become planners themselves. It has been observed that the latter category do a great deal of actual planning in the West Indies.²⁶⁷ In Ghana the intermediate - grade planning assistants with 3 years training have proved most useful in supplementing the qualified planners available.²⁶⁸ There is therefore a need to maintain this kind of training. The education that is lacking is that of the graduate and post graduate standards to cater for comprehensive planning. Urban studies are undertaken at the Universities of Ghana, Ibadan, Haile Salassie

and Nairobi and research facilities in urbanisation exist at those centres and at Dar es Salaam and Makerere Universities.²⁶⁹ However, none has been operating long enough to produce more than a bare minimum of planners required by the country it serves. Very few of them have adequate staff and facilities.²⁷⁰ It may be that it would be too expensive and perhaps unnecessary for just one East African country to establish one complex of urban studies for its own home needs; urban studies is a new subject even by the standards of the developed countries.²⁷¹ It is only in recent decades that the United Kingdom, France and the United States of America have seen the need to establish urban studies and institutions on small scales. It is therefore recommended that a number of neighbouring countries with a common language and similar educational systems might pool their financial resources together to found an urban and Regional Planning Institute to serve them. Such an Institute would be ideal for the countries of East Africa and may also serve countries like Zambia, Somalia and The Sudan.²⁷² The Institute should be able to mount both graduate and post-graduate courses in the field of planning and development. It could be administered by the East African Inter-Universities Council which continues to co-ordinate a number of projects undertaken by the East African Universities. It is envisaged that while the graduate course would concentrate on the traditional subjects offered in planning and development, the post graduate course, perhaps at a diploma level, would be able to attract graduates from all the disciplines related to planning such as sociology, economics, law and political science. Practising planners would also use the institute's library and research facilities.

The situation is bad enough when there is not sufficient manpower to choose from, but when the few who are available cannot be relied on for dedication, impartiality and honesty, as the Allen Report

has revealed in the case of Kampala, the position becomes intolerable. Hitherto, the discipline and control of planners in East Africa has been governed by the public service regulations.²⁷³ The regulations are known as standing orders. Among other things, they prohibit public officers from engaging in any occupation or employment for gain outside their official duties. They may not accept a directorship or serve on a public board or committee or receive any fee or an honorarium or benefit of a Government contract except in their capacity as shareholders in a company. A public officer is expected to serve the state to the best of his ability and honesty. It is not always easy for the state to check whether public officers have performed their duties or acted in accordance with the standing orders. Consequently, whether they do so or not is, in the main, left to their discretion and judgment. A series of criticisms have been made against public officers in East Africa and in some cases the criticism has led to prosecution and conviction. However, in the majority of cases the criticism has had to be general without naming any specific officers in particular because of the difficulty of proving any allegation. For instance, it has been said,

"Many public officers do the minimum of the work expected of them and concentrate on work designed for personal gain..... certain senior officers in the public service who are supposed to advise ministers and assist them in the making of Government policies do not do so but patiently wait for the Ministers to initiate and produce them on their own and, even when the policies have been approved, the officers implement them, if at all, with lukewarm enthusiasm." ²⁷⁴

Some have been accused of illegally trying to influence the actions of

subordinates. They have coerced the latter to act partially in their favour or that of their relatives and friends. Allegations of attempts on the part of senior officers, to bend the ends of justice and to use discretionary powers in favour of vested interests have also been made. Incidents are well known in East Africa where land, goods and money have found their way into the possession of public officers on no other ground except that they promised to exercise their public duties in favour of the 'donors.'²⁷⁵ Public Service Commissions were set up to preserve the independence and impartiality of public servants and to insulate them from political pressures.²⁷⁶ With the attainment of independence, the nationalist Governments found themselves saddled with a public service wedded to the colonial ways of doing things, resentful of the ministerial system and, in some cases, resentful of ministers they thought incompetent. Insulation from political pressure meant that the civil servant was at best, lukewarm and sceptical about political party ideas and programmes.²⁷⁷ Mindful of the likely sabotage directed against their interests and policies, the Governments have pressed for more control of the public service and in both Tanzania and Uganda it has been politicised.²⁷⁸ The Public Service Commission too was politicised.²⁷⁹ This has meant that both the Commission and the Minister are reluctant to probe into the activities of senior public officers on whose support the Government may depend.²⁸⁰ Consequently, many allegations of corruption, nepotism and tribalism have gone uninvestigated.²⁸¹ In the field of planning and development, senior officials have used their posts to acquire for themselves choice lands, property and Government contracts. They have been able to acquire the latter through the loophole in the standing orders which states that prohibition against personal gain of an officer does not apply to a company

of which he is a member. In 1969, a research scholar investigated into the ownership of private property by the Uganda Ministers and senior public officers and found evidence that many had unexplained companies and accounts, that town clerks, engineers and planners owned more than one house. In one notorious case, an officer owned more than six houses which he was renting. The then civilian Government suppressed the publication of the research results.²⁸² The researcher found that in most cases the officers had collected all the wealth within a short time of being in employment and that before employment they had no money to their credit.

Other studies have shown that planners tend to site development projects in planning areas which claim a cabinet Minister as their representative;²⁸³ that a person related to a Minister or to them or having political influence with the Government or political party is more likely to have his planning application approved without formality than a person who is not so favourably placed.²⁸⁴ This was one of the reasons why Tanzania imposed a leadership code that prohibits ministers and public officers from owning more than one property or using their official status for personal gain.²⁸⁵ The code has been fairly successful because of the ideological and political commitment to socialism that has swept through the ruling party of Tanzania. A code is inadequate to keep public officers in line unless it is backed by statutory sanctions particularly in countries like Kenya and Uganda where spontaneous commitment to the ordinary people on the part of the public service is generally absent.²⁸⁶ It may be noted also that since independence a public officer in East Africa can only be dismissed for "cause". The standing orders provide, inter alia, that "Public Officers

and employees in the public service are dismissed only for misconduct..... When disciplinary proceedings are instituted against a public officer they should be brought to a speedy conclusion, hence the Responsible Officers or Appropriate Authorities (Preferring the charges) should make sure that submissions to the Public Service Commission are full and factual, that events which led to disciplinary action are isolated as to place and time and cross-referenced so as to facilitate speedy handling by the commission. Removal of an officer from office is not effective until the constitutional act of removal is in fact done and cannot therefore be back-dated. In all disciplinary proceedings whatever, the rules of natural justice apply. Those who handle the cases must be impartial and both sides must be heard. No officer can therefore be subjected to any punishment without being informed, in writing, what he has done wrong and being given an opportunity to make his defence in writing."²⁸⁷

It has been said that the East African Public Service Acts and the Regulations made under them for the disciplining of public officers are so rigid and protective that it is almost impossible to remove from office, any public officer whose terms of service under a pensionable scheme have been confirmed.²⁸⁸

In exchange for the security of tenure suggested under the Planning Service Commission, stiffer regulations should be made to govern public officers employed in the planning and development of East Africa. It is recommended that besides the normal causes for which ordinary officers are disciplined and removed from office, there should be a property code to govern planners and administrators employed in development. As soon as a planner or administrator is appointed he should be obliged by law to disclose his proprietary interests, whether land, buildings or bank accounts.²⁸⁹ The interests should be registered with the Planning Service Commission. To avoid any embarrassing disclosures the register should be deposited in a

bank. In the case of land, the Registrar of Titles should be notified of the officers who are affected and the interests in land which they have disclosed. Similarly, in the case of bank accounts, the various banks with which the affected officers bank should be notified of their customers who are subject to the regulation. In the event of an officer acquiring more land or banking more than a prescribed sum of money the registrar or the bank, as the case may be, would be statutorily obliged to inform the Planning Service Commission. The officer would be under a duty to explain how he came to acquire the land or the money. Further, it should be obligatory on all accounting officers of the various departments of the Government to make periodic reports about their teams and subordinate officers and the Commission should set aside one meeting in each fiscal year at which these reports will be examined and assessed. Lastly, while not advocating the return to the colonial position when public officers could be removed at the pleasure of the state, it is argued that the present protection of public officers is too rigid and should be relaxed to enable the governing bodies to remove from office public servants who are incompetent or who have been proved to be of little use to their respective departments.²⁹⁰

It was found necessary to discuss urban organs and personnel at greater length because of the conviction that without an adequate structure and an efficient administration, the initiation and formulation of planning measures, however commendable, may never be implemented. Secondly, unless there is competent staff to tackle planning problems a great deal of public funds will be wasted on non-essential planning and development projects. The examination in the next chapter pre-supposes an existence of adequate urban planning and administrative organs. It also assumes that the persons who will be responsible for

planning and implementation of the development measures will be motivated by the notions and ideals of planning and development and the desire to serve the needs of the communities concerned.

CHAPTER SIX: LAND USE PLANNING

SECTION I: INTRODUCTION

The first chapter gave a panoramic view of planning in its widest and most general sense. The discussion touched on a multiplicity of notions, objectives and subjects. It was said that in its broad sense, planning is multi-purpose, comprehensive and calls upon the services of many professions and disciplines. This chapter is concerned with land use planning in particular or what is sometimes described as physical planning. However, in view of what is examined in the previous chapters it is inevitable that land use planning should be discussed with reference to those other topics and objectives which were outlined in those chapters. Since planning has many facets it follows that its definition varies with the objects to be achieved, with the discipline of the planner and his appreciation and commitment to one or more interests in the community he reckons ought to be served by his plan.¹

Charlesworth² has defined Town and Country Planning Law in the United Kingdom as that law which deals with the making of plans or schemes for the planning and development of both urban and rural land. He points out that such plans and schemes lay down the kind of development which is permitted in the different parts of the planning area. They also control the form which that development must take from the points of view of public health, public safety and the amenities of the neighbourhood. Thus, as seen by a lawyer, planning is concerned mainly with the imposition of restrictions on the use of land for the promotion of good health and the well-being of the local environment. In other words, planning, at any rate, as seen by Charlesworth, is essentially

concerned with the control of land use planning and development.

Commenting on the Housing, Town Planning, etc. Act, 1909, the first of its kind to deal with the subject of town planning in England, Heap, another English lawyer, states,³

"Here at last was an opportunity of controlling not merely the construction of individual buildings (that was possible under the Public Health Acts) but of building development as a whole, regarding the land of individual owners not as so many isolated plots but as parts of a greater whole and providing for the development of each plot not only in accordance with the requirements of local building by-laws but, in the words of section 64, with due regard to 'amenity and convenience in connection with the laying out and use of the land of any neighbouring lands.'"4

Once again we see that the emphasis is on control rather than planning per se. Indeed, this particular legislation had empowered local authorities to make town planning schemes with the general object of securing proper sanitary conditions, amenity and convenience in connection with the laying out and use of the land and the neighbouring lands.

Telling⁵ analysing the same legislation remarks that not only could it regulate the number of buildings on a site and the space about them, but it could provide both for the control of their appearance and the way in which they might be used - a characteristic of the law applicable to the detailed Jinja plan referred to elsewhere in this book.⁶ Foulkes, another English lawyer, has seen the main purpose of planning law as the control of land and prohibition of development without planning permission.^{6a}

The deduction to be drawn from the above citations is that the laws assumed that there were certain people, called planners and

and developers, who were set on wrecking the land, endangering life and health and spoiling the environment by their zeal to indulge in planning; and the purpose of the law was at best to stop them doing so or at least to control their actions. In this sense planning law was negative. This attitude may be compared to the liberty of the individual under English law. The liberty of the individual is in many respects taken for granted and it is up to those wishing to take it away or restrict it in some form, to justify their act with reference to some specific rule of the common law or statute. Similarly, the traditional and normal rights of ownership and use of land should be taken for granted and those desiring to alter them must justify their actions by a reference to some specific rule of law enabling them to do so. Thus, planners, like the law enforcement agencies of the land felt themselves restrained from doing what they regarded as proper and necessary.⁷

At the same time the positivists in planning were pressing for a change in the planning law. They occasionally persuaded the Government of the day to appoint commissions of inquiry to investigate the state of the law and to make proposals for change. For example the Barlow Commission on the Distribution of the Industrial Population⁸ expressed the advantages of dispersal and decentralisation in comprehensive redevelopment. It was equally alarmed by the high compensation which local authorities had to pay when extinguishing industrial firms, and argued that this high cost, taken with the inability to recover batterment levies, was preventing any reduction in employment densities. The Barlow Report was followed by the appointment of a Committee on Land Utilisation in Rural Areas.⁹ The Reports of both bodies resulted in the passing in 1943 of two Acts concerned with planning - one providing for the appointment of a Minister to be in charge of securing

consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales and, the other extending control of planning to the whole country.¹⁰ The power to redevelop and reconstruct areas which had been heavily bombed during the war was vested in local authorities by yet another Act, this time the Town and Country Planning Act of 1944. In the same period another committee, the Uthwatt Committee was investigating the problems of Compensation and Betterment.¹¹ The Committee's Report argued that by nature town and country planning cannot be static. It must advance with the conditions of society which it is designed to serve. Although many of their recommendations were made in connection with Reconstruction Areas after the war they intended them to be of general application to the whole country. They recommended that selection of areas must be left to the discretion of the local planning authority to be determined solely by reference to planning requirements under central government guidance and control. Of the Uthwatt Report it has been said,

"To a large extent, the Report equated the implementation of planning aims with compulsory purchase powers. Thus the development rights in all undeveloped land were to be purchased by the state, and, on urban land, compulsory purchase powers were advocated for reconstruction areas, for acquisition in advance, for reinstatement, for recoupment and for other adjustments necessary for good planning. Recognising the procedural difficulties inherent in such an extension of compulsory purchase, various measures to simplify procedure are also recommended. The recommendations of the committee leave no doubt that the dominant concern was to secure that planning objectives were not thwarted by legal incapacity or procedural and financial defects."¹²

In addition, the

Report noted that planning objectives embraced social and economic

objectives. Later the Report formed certain aspects of the legislation dealing with New Towns in 1946.¹³

However, it was not until the end of the Second World War that the attitude towards planning law in Britain underwent a radical change.¹⁴ This resulted in the enactment of the Town and Country Planning Act of 1947. Although the old attitude that emphasised control persisted there was a new awareness that to remove the ugly sights of the war bombing, to redevelop the properties that had fallen under disrepair and to plan for further industrial expansion and the growth of population, it was necessary to vest local planning authorities and the central government with wider powers of planning and development. Planning had become a necessary evil in the eyes of those who previously opposed it. For those who saw it as the only solution to the problems of urban centres it was a welcome change. But no sooner had the legislation begun to be effective and some sort of order and orderly development occurred than a reaction against the powers, as vested in local authorities and the central government, gained support.¹⁵ The reaction was followed by a reluctance on the part of policy and decision-making bodies to implement the provisions of the Act to its fullest and logical limits. Thus, Hart has observed,

"Since 1947, complaints about the planning system have mounted, chronic delays have arisen in securing Ministerial approval of Development Plans and in dealing with applications for planning permission. It has been argued that broad policies have bogged down in details, especially in arguments over compulsory purchase of land. Faced with cumbersome procedures, financial limitations and inadequate staff, local planning authorities have been unable to make much progress with comprehensive development."¹⁶

The planning system established by the Town and Country Planning Act of 1947 as consolidated in 1962 was to remain in force until 1968 when new ideas about the planning process came to be formulated. In 1965, the Minister of Housing and Local Government appointed a Group known as the Minister's Planning Advisory Group to investigate the matter and make new recommendations.¹⁷ They published their report on a new styling for Town and Country planning control. The publication was followed by a White Paper entitled "Town and Country Planning" and the White paper spelt out the objectives for the new proposed changes in the law in the following terms:

"Three major defects have now appeared in the present system. First, it has become overloaded and subject to delays and cumbersome procedures. Second, there has been inadequate participation by the individual citizen in the planning process and insufficient regard to his interests. Third, the system has been better as a negative control on undesirable development than as a positive stimulus to the creation of good environment. These are the main defects which the revision of the system must tackle and the Government propose to remedy them. To combine the safeguarding of individual interests with quicker decisions means streamlining; to emphasise the positive environmental approach requires a concentration of effort on what is vital, and less central control over detail; and in considering the changes necessary we must recognise that planning now is operating in a very different context from that immediately after the War."¹⁸

Apart from providing for citizen participation in planning the law was to direct that the drawing up of plans must be realistic in financial terms. The demands plans make on the main capital expenditure programmes must be reasonable in amount and in timing. However, admirable

they may be; plans which cannot be realised are positively harmful. They stand in the way of more realistic plans, and cause needless worries to people who fear that their interests may be affected. In 1971 the provisions of the Town and Country Planning Acts of 1962 to 1968 were, with a few exceptions, repealed and re-enacted in consolidated form in the Town and Country Planning Act of the same year. The following year the Government found it necessary yet again to propose a new bill to cover various aspects of planning that were omitted in previous legislation. These included, inter alia, provision for joint structure plans, control of demolition in conservation areas and the extension for a further five year period of the special powers to control office buildings. The new Act was known as the Town and Country Planning (Amendment) Act 1972 and to-day the correct citation of the planning law in England and Wales is the Town and Country Planning Act of 1971, as amended.¹⁹

There are several reasons why it was found necessary to trace the historical background of planning legislation in the United Kingdom. First, it has already been noted that planning as a discipline in East Africa derives its origins from English planning laws, practices and techniques. These continue to play an important role in the urban planning and development of East Africa notwithstanding that the countries of the region are now sovereign and independent states. It was therefore necessary to examine the development of these laws and practices in the country of origin if any understanding and appreciation of how they operate in East Africa are to be had. This examination may further reveal the qualifications and limitations that need to be imposed in the context of East Africa. Secondly, the historical account of

English planning law indicates the dichotomy between the forces that control planning law on the one hand, and those that endeavour to advance and guide it, on the other. It might be a useful exercise to discover whether the same forces with equal power or influence exist in the area of this study. Thirdly, the examination has shown that land use planning is not merely concerned with the drawing up of maps but involves, among other things, the consideration and evaluation of certain policy priorities.²⁰ Fourthly, the majority of the East African planners are people who were either educated in the United Kingdom and countries of the commonwealth with similar planning laws and techniques or who continue to rely largely on the planning techniques and literature of the same countries. Consequently, it is relevant that these same planners should have some basic information as to how these have developed over the years. Lastly, it is necessary that in discussing planning law in East Africa some space should be reserved for an examination of how that law has developed in the region and British Planning policies and laws are part of that development, at any rate, during the periods before independence. In this respect it may be mentioned that the laws of planning in East Africa are in substance and considerable detail replicas of those obtaining in Britain before the post - 1960 legislation.²¹

SECTION II: URBAN LAND USE PLANNING IN EAST AFRICA

PART (A): URBAN PLANNING BEFORE INDEPENDENCE

"The Africans, even if they formed the majority had little or no influence on layout and outlook of these towns; they were in them an element of instability often possessing right of residence only when employed by the privileged town-dwellers - the Arabs, Indians and Europeans. It was they (the latter) who decided the town plan and the segregation into living quarters, in the first instance according to race, then according to wealth and social status. In either case the result was usually the same, namely, overcrowded native quarters often at the edge of the town, or even outside it to avoid the strict building regulations enforced inside the city boundaries."22

It is with these words that Ernst Weigt who has made a special study of the urban set up of the region castigates the colonial planning of the East African towns and its consequences. In defence of the planners of this period several reasons have often been advanced. In the first place the pre-colonial East African was not urbanised. With the exception of certain coastal towns which experienced Arab settlements and trade and a number of inland royal enclosures of the traditional rulers, urbanisation was a result of colonialism. Thus, the African who did not know urbanisation had nothing to contribute in the planning process designed to eradicate the problems of such urbanisation. In the second place, there prevailed an opinion, later proved to have been erroneous, that the Africans did not wish to be urbanised and those who resided in the towns did so by dire necessity with the intention of returning to their 'homelands' whenever opportunity presented itself. It was argued therefore that to cater for such people in the urban plans would have

been a wasted effort and a misuse of manpower and public funds. In the third place, it can be said that even if it was inevitable that the Africans wished to be part of the urban communities, the colonial policy in practice, if not in theory, was to discourage such wishes and the planners were only carrying out the policies of their political masters. Prima facie, these are grounds that appear to exonerate the colonial town planners from the charge that they completely ignored the interests of the local inhabitants. However, an analysis of the conditions prevailing at the time is likely to render the grounds fallacious. Admittedly, East Africa was and still is one of the least urbanised regions in the world.²³ On the other hand, the statistical data of the period reveal an interesting phenomenon. At no time during the period was there any occasion when the combined immigrant population outnumbered the local inhabitants in any given town or urban centre. The statistics of the period show that for each town whereas the immigrant races numbered a few hundreds in population the Africans were in thousands and whenever the former population increased to thousands the latter would be in tens or hundreds of thousands. Moreover, the respective populations would be on a permanent basis rather than a temporary one. It is also true that the Africans then as now had a tradition of returning to their villages and ancestral homes, but this was no more strange than, say, Europeans who possess an urban home and a country home and are in the habit of moving to and from the two places of residence. The fact that one commutes between two places which he calls home is not a justification for excluding him from any plan designed for either. The argument that the local inhabitants were ignorant of urban problems might suffice as an excuse for not consulting them but it does not altogether answer the charge that their interests were ignored. There are, within the developed countries, large groups of ignorant

people and members of the working class who may not understand the intricacies of the planning process or who may be indifferent to the problems of urbanisation but those are always catered for in the plans and schemes of development. The idea that the planners were simply carrying out the policies of their political masters is equally questionable.

In the majority of cases the so-called masters were so removed from the scene of planning that they invariably accepted the assessment and advice of the planners. Further, there were occasions when the political masters directed that the interests of the local inhabitants should prevail but such directions were ignored or interpreted differently by the planners.²⁴

The notion that the Africans were not attracted to the urban life has been contradicted by every researcher on urbanisation in Africa. The policy that discouraged them from settling or residing in towns is equally criticised as having been unrealistic and short-sighted in view of the economic and social benefits towns appeared to offer. In any event, research findings have proved that inspite of this policy, thousands of rural dwellers continued to flock into towns

contrary to the anticipation of the colonial planners and administrators.²⁵ Thus, the examination of urban planning during the colonial period must take into account the fact that the plans were influenced by the interests and demands of the dominant immigrant minority rather than by those of the local inhabitants who formed the greatest numbers.

UGANDA:

Urban planning in Uganda has been institutionalised since 1918.

However, control of planning during the colonial period tended to be more ad hoc and haphazard than systematic and comprehensive. Much attention was concentrated on the planning and development of Kampala municipality as it was then known. Though not the then capital of the Protectorate, Kampala was the largest commercial town in the land. Of the East African Towns only Kampala can claim to have grown out of an indigenous African town. As already noted, the others have developed mainly from Arab and Asian trading outposts or from European settlements under the colonial administrations.²⁶ The Municipality of Mengo, the seat of the Buganda government since 1884, is within Kampala. Until its abolition in 1967, Buganda was the largest and most developed region of Uganda, having been one of the four ancient Kingdoms in the Country, each with a separate system of African administration organised under a semifeudal chieftainship.²⁷ In Kampala, the palace of the kings and their traditional tombs stand side by side with new buildings and bazaars and in contrast with modern architecture and design. Mengo was the focal point of Uganda's explorers, missionaries and colonial administrators. Inevitably, it became the centre of commerce and trade. It is not surprising therefore that Kampala should have attracted more planning interests than any other urban centre in the country.

In 1915, the Colonial Office sent Professor Simpson to Uganda as a planning expert to advise the colonial administration on the growth, planning and development of urban centres in the Protectorate. At the time, Kampala, as a colonial administrative centre had been in existence since 1890. Among his recommendations was that a Central Planning Board should be established to deal with the urban problems not only of Kampala but of all other administrative and trading centres throughout the Protectorate. He was mainly concerned with the health of the residents

and the beauty of these towns and centres. This is reflected in the membership he proposed for the created Planning Board. It was to consist of the Principal Medical Officer as the chairman and the Chief Sanitary Officer, the Land Officer, the Director of Public Works and the Medical Officer of Kampala as members. None of these officials was a qualified planner, and in fact the Board did not have a qualified planner on its membership until 1949.²⁸ In spite of its limited objectives and the short time he spent on its preparation, Simpson's Report was to be the foundation of urban planning and development in the Protectorate. His own tentative plan for the Kampala area was to guide the town's administrators for nearly twenty years. Of his work, Kendall who was the director of Town Planning in Uganda in the 1950s, made the following commendation :

"In planning thought he was well in advance of his time, for it must be remembered that large-scale experiments in town planning had only just begun in the United Kingdom at the beginning of the century, and that the Town Planning Institute (in the United Kingdom) was founded only in 1914."²⁹

But because the Board was non-professional as far as planning was concerned, no comprehensive plans were produced or adopted. Decisions were taken on problems as they arose with little consideration given to the orderly and regulated development of the towns in the future and Kendall remarks that,

"The Board lacked advice of a trained planner although the various qualified officials were consulted from time to time..... The absence of an overall plan created a lack of continuity and ad hoc

decisions became the rule rather than the exception..... There appears to have been little real collaboration between the major departments of Government in regard to over all planning policy. The records of past Minutes display wide divergence of opinion by members with the chairman being quite incapable of resolving them."30

Failure of the Board to halt unauthorised development was noticed by another planning expert who made the following observation,

"It is by these and other signs that one is made to realise how terrible are the ravages created when our so-called civilisation forces its way uncontrolled into the heart of a new country. Need it be wondered that the more thoughtful members of the community feel overwhelmed with convinced despair when they view this state of chaos and almost licensed breach of all reasonable development."31

The nearest the Board came to making a comprehensive Plan was in 1919 when the Simpson Report was still fresh in their minds. In that year they wrote a memorandum suggesting three alternative Plans marked "A", "B", and "C". The Plans were discussed by the influential members of the Kampala community and by the Governor of Uganda and his advisers. Thereafter, the Governor dispatched the Plans to the Secretary of State for the Colonies who approved the adoption of Plan "C", and since 1920 Kampala has developed in accordance with the zoning proposals indicated in that Plan. The Plan was based largely on the previous recommendations of Professor Simpson.

The next important expert to advise on the development of Kampala came to the Uganda scene in 1929. This was Mr. A.C. Mirams, a well known English planning consultant and valuer. He was invited to Uganda and

asked to advise the government

"In regard to the general layout of Kampala and Jinja with special reference to the future expansion, the siting of public buildings, co-ordination of arrangements for roads, drains, sewers, electric light, and power lines, the problems of native location, the best means of refuse disposal and the revision of the existing rules of the township generally and the preparation of a Town Planning Ordinance."³²

Mirams, who had had considerable experience of similar towns in the Far East did much more work for Kampala than was envisaged in his terms of reference. His investigations, findings, proposals and recommendations were compiled in two volumes and his final report was covered in no less than twenty four chapters. The report covers matters such as historical background, geological and meteorological conditions, the location and composition of populations, land and land tenure, roads and the dependent problem of traffic, housing, architectural control of buildings, co-operative housing for lower income groups, bazaar areas, drainage of swamps, improvement of health, siting of industries and the new railway station, sewerage and refuse disposal, quarries and brick fields, open spaces, recreation and play grounds, and the proposed legislation to ensure the carrying out of the development plan.³³ In the context of physical planning, it can be seen that Mirams was as comprehensive as he could possibly have been at the time and under the circumstances in which he made his investigation. His influence on the subsequent development of Kampala and other Uganda towns was considerable. It has been observed that the present built-up areas of Kampala and Jinja both commercial and residential, are a direct result of his recommendations. Subsequent plans have since been guided

by his report.

The policy of calling upon the services of expert planners whenever things got out of hand was largely unsatisfactory. Both Simpson and Mirams had been invited because the local "planners" did not know what to do faced with the speed with which Kampala and the other major towns were expanding and development without control. Yet, the central Planning Board was supposed to control such development by definite plans. It was not until 1949 when Kendall, an experienced town planner, was appointed to the newly established post of Director of Town Planning in Uganda, that some semblance of order and foresight began to impress themselves on the urban planning of the Protectorate. Kendall who had had similar experience in Malaya and Palestine decided to overhaul the practices that had characterised urban planning in Uganda since the departure of Simpson. He reorganised the new department of Town Planning and recruited new staff on a permanent basis. He took over the chairmanship of the Central Planning Board. The impact of a full time professional planner in Uganda can be illustrated by comparing the frequency and the business of previous Board Meetings with those he managed to call and influence. In its thirty years of existence the 'lay' Board managed to hold only 32 meetings and discussed on average about 20 items each year. On the other hand, during the first six years of Kendall's directorship there were 57 meetings, an average of 8 meetings a year, and the records show that the least number of items discussed in any one year of that period was 43 while the biggest was as high as 121.³⁴

Within a year of becoming the first director of the department, Kendall initiated the passing of the Town and Country Planning Ordinance which he regarded as necessary because, in his own words, "Planning in

Uganda was based on the 1932 English Town and Country Planning Legislation instead of the 1947 Act."³⁵ Although amended slightly from time to time, the ordinance remains the basic law of planning in Uganda to-day. Kendall, his department and their successors could not cope with all the planning problems of Uganda. The department's responsibilities stretched over all the urban centres in the whole Protectorate. At the same time, the Director had only a small staff at his disposal. These, coupled with the worst conditions of transportation of the time made it impossible to pay attention to all the urban problems of the country except the very serious ones and even then only in respect of the bigger towns like Kampala, Jinja, Mbale and Masaka, the latter three being within easy reach of Kampala where the headquarters of the department were situated. Kampala being the biggest and commercial centre of Uganda absorbed the greatest energy and attention of the professional planners. Expatriate advisers and scholars found it convenient to deal with and study the urban problems of Kampala. Upon this point, Professor Langlands of Makerere University makes the following comment,

"Clearly the greatest amount of written material exists on Kampala, as the largest and geographically most complex of the country's towns."³⁶

The planners were further handicapped by the fact that much of their time had to be spent on non-professional matters. As head of department, the director was in charge of a staff employed throughout the country. He had to look after their interests whether relating to work or social welfare. According to the government's standing orders, moreover, he was expected to co-ordinate the work of his department with the policy decisions of other government departments and to advise the various Ministers on the implication of their ministerial policies

to urban planning and development. He also exercised powers of supervision over his staff throughout the country. Many of the visits he frequently made to urban centres outside Kampala were necessitated by administrative and supervisory rather than professional expediency. His department was responsible for receiving, commenting upon and approving numerous planning applications from individuals who wished to develop the urban centres. It is therefore to their credit that in spite of these varied tasks the planners found sufficient opportunity to carry out professional duties in the field of urban planning and development. In perspective, Hather, of the same department since independence, has reviewed the work of his predecessors and commented thus,

"The series of urban plans produced.... were very limited in their application to the total needs of urban population (and) were usually the result of hasty 'through - the windscreen' surveys, and lacked any prior attempt to quantify the problem. No positive provisions were made in these plans for their implementation and to a considerable extent they were restrictive in nature and content. But at least during this phase the basic fabric of a planning department was kept in existence, and the hope of planning was retained, during a period when these early efforts towards urban planning might easily have disintegrated completely."³⁷

It is to be appreciated that the Africans having been ignored as a serious urban community, much of the planning was undertaken in those urban areas where the majority of the immigrant races resided and carried on their businesses. The most scenic and desirable locations would be earmarked for the dominant communities as residential quarters. The central parts of the town would be chosen for their businesses. In between the next best areas would be reserved for golf courses, tennis courts, swimming

pools, club houses, and schools and hospitals for the same communities. Then a network of tarmac roads would be planned to connect these focal points and thereafter the colonial planner would be concerned with finding places where the Africans who had found their way into the urban set up would be directed to settle.³⁸

Notwithstanding that the Africans were largely ignored in the planning and development of the areas described above, their existence could not simply be overlooked. Apart from those who came to the town of their own accord there were large numbers of Africans who were required to be in the employment of the government and urban authorities. They might be employed as labourers, office cleaners and messengers. Later, as many of them became educated and trained in schools and technical schools, there grew up a large community of indigenous skilled and semi-skilled technicians, bricklayers, masons, cooks and clerks. Almost all the immigrant households employed one or several Africans as cooks, maids and house servants. With a few exceptions all the houses belonging to the immigrant races were designed in such a way that they did not include extra rooms for house servants. It was inevitable that this large community of useful natives and outnumbering their masters by substantial numbers in population should be found a 'natural' home. It was usual to select one or several locations within the peri-urban area and to declare them as native reserves or African quarters. The locations would be placed under the jurisdiction of the local chiefs depending on the tribal group that predominated in the countryside surrounding the town. The choice of jurisdiction and chiefs was not always a wise one since the urban Africans were invariably composed of different tribes from East Africa while the chief and his tribal customs might have been local affairs unfamiliar to and resented by

those who did not happen to belong to the same tribe. In some cases each tribal group would combine and "allocate" themselves one part of the location and demand the right to exclude 'alien' tribes and to choose their own chiefs. Such demands were often dismissed as being petty. The dismissal may be appreciated when it is realised that among the early colonial administrators a considerable number saw the African as an African without bothering to discover that there were differences between one tribe and another and that the traditions and customs of one tribe may be taboos to other tribal groups.³⁹ Be that as it may, the policy of segregating the Africans from other urban dwellers resulted in the evolution of two systems of urban administrations within one geographical area. One was highly sophisticated, British orientated and designed to serve the interests of the immigrant minority. It took priority in manpower, materials and finance. The other was traditional and ignorant of urban problems. It was supposed to serve the African majority many of whose customs and aspirations it had no knowledge or the inclination to appreciate and evaluate.

The dualism in urban administration in East Africa is best exemplified by the City of Kampala and the Municipality of Mengo. Although Mengo is geographically within the City of Kampala, it was historically administered and developed by the then Kingdom of Buganda of which it was the capital. Under the Buganda system of government, the Kingdom was divided into counties sub-counties and parishes. Mengo was one of such sub-counties of which Mengo Municipality was a parish. In other words, both the sub-county and the parish had the same name of Mengo. Originally Kampala was founded on the eastern side of the Mengo Municipality but through decades of developments and extensions the

latter came to be almost surrounded by areas within the jurisdiction of the Kampala Urban Authority. Nevertheless, both the Municipality and the areas immediately beyond the boundaries of Kampala continued to be under the jurisdiction of the Buganda government. The Municipality was inhabited mainly by Africans and it was developed mainly by and for them. As far as the Buganda government was concerned, Mengo was a parish like any other to be treated equally like the rest of the Kingdom without any special emphasis on urban problems and their solutions.⁴⁰ On the other hand, Kampala was modelled on the English municipal pattern of Mayor, Deputy Mayor, Aldermen, Councillors, a Town Clerk and other full time officials. We have seen that the Central Planning Board and later, the Town Planning Department concentrated on its planning and development. Thus, while the two areas overlapped territorially they experienced different aspects of policies, planning and administration. Kampala evolved its own system of rating and its own utility services of roads, sewerage, street lighting, water supply, electricity, parks, swamp reclamation and pest control.⁴¹ Some of these services were extended to suburban areas which were legally under the jurisdiction of Mengo but which had no means of providing their own services.

The superiority of Kampala in wealth and the provision of community services over Mengo became a major source of friction between the Kampala Urban Authority and the Buganda government. The former objected to the unregulated type of development which was taking place around the city limits. Its residents expressed fears that epidemics would spread into Kampala from these areas even though there is no evidence that this ever occurred. The Buganda government resented the presence on its territory of such a powerful rival authority and resisted its tendency to spread and absorb an even larger area through the Protectorate's

Government's powers of compulsory acquisition.⁴² The Mengo sub-county chiefs retained the administrative and judicial responsibilities over all the Kampala population which was classified as native. They were authorised to collect taxes from the Africans who worked and resided in Kampala and yet it was the City Urban Authority which provided them with employment, shelter and social services. The non-Baganda Africans working in Kampala resented the arrogance and highhandedness with which the Buganda chiefs treated them. The maintenance of law and order within Buganda was the responsibility of the Buganda government. This meant that the Municipality of Mengo and the Africans residing in Kampala were policed by the Buganda chiefs and 'askaris' who were untrained and inexperienced in dealing with the problems of a highly mixed population in an urban environment. The Buganda Agreement of 1900 had contemplated this situation and provided that the chiefs could always ask for the assistance of the Protectorate Police. The chiefs got into the habit of calling in the Protectorate Police to investigate and deal with cases of crime with which it had been intended that the Buganda authorities should deal.⁴³

Although up till 1969 the sub-county of Mengo was always the more populous of the two, Kampala was always by far the wealthier. Comparative official estimates over the years show that in revenue and expenditure, the finances of Kampala exceeded those of the sub-county. In the years between 1928 and 1947 these excesses were in the ratio of six to one in favour of Kampala. After that period, the revenue for Kampala increased more rapidly while that of Mengo remained almost stagnant. For instance, in 1953 Kampala's expenditure was £500,000 while that of Mengo was a mere £14,000.⁴⁴ Much of Kampala's income came from the rates and development projects while Mengo relied heavily on subsidies and grants

from the Protectorate government. The financial weakness of the Mengo Municipality cannot be attributed entirely to the poverty of its residents even though this was a contributing factor. It was mainly the result of the administrative incapacity of the Mengo authorities and the rigidity of the Land Tenure system which existed in Buganda.⁴⁵ The Buganda authorities failed to raise or hold funds available for investments. The Baganda landowners strongly opposed any reasonable level of taxation or urban rating. The highest level of taxation to which the wealthiest Africans paid was ridiculously low in an urban context. In contrast, the Kampala residents and businessmen paid rates and taxes comparable to those paid in an average English town.⁴⁶ The inability to appreciate the possibilities of a cash economy in preference to an agrarian subsistence economy was first pointed out by Sir Apolo Kagwa, one of the first Africans ever to sit in the Legislative Council. In his maiden speech to the Council he said,

"..... Sir, I should like to draw attention to the fact that the introduction of a cash economy has disturbed the African Society and shaken (it) to its very foundation - our customs. Unless the African is trained in the new economy and the art of earning money and spending it wisely he will be ruined and his progress will be impossible."⁴⁷

Few people in Mengo or elsewhere in the native administrations nor the Protectorate government took heed of Kagwa's warning. It is noteworthy that under the Buganda Agreement of 1900 it was the chiefs who owned or controlled most of the land within Buganda including the Municipality of Mengo. At the same time, they were the same people who constituted the planning authority under the various Local government ordinances.⁴⁸ They would therefore have determined any system of rating and approved any

development projects. Traditionally, the chief's power lay in his ownership and control of the land, for all his tenants and sub-tenants were under a customary duty to pay him homage and traditional rent as well as to obey his orders and do various onerous services for him. The alienation of his land or the tying of it to industrial or housing projects would have meant the reduction of the tenants and therefore a decrease in the chiefly powers and privileges. It is for these reasons that the chiefs resisted any attempts for full scale planning and development of the Municipality of Mengo. Occasionally, the non-African businessmen of Kampala would enter into leasehold agreements with some of the Mengo chiefs under which the former would pay a premium and be allowed to develop the latter's land on a commercial basis. From this system there grew up a wealthy class of Baganda chiefs and their non-African businessmen. The latter found the arrangement attractive in the sense that rates and taxes were much lower than those levied in Kampala. Moreover, the chief had only to whisper to his tenants that the non-African was his friend and the tenants would flock to his business and deal with him in trade. Thus, the non-African businessmen might get free and effective advertising. This analysis was characteristic of all urban centres in East Africa even though the system of chieftainship and its influence might have differed from region to region.⁴⁹ Every urban centre, trading post and every administrative town had its own African counterpart with more or less similar conditions and consequences.⁵⁰ What has been said of Uganda generally and of Kampala in particular may be observed in Kenya, Tanzania and the cities of Nairobi and Dar es salaam except that the planning policies of these other countries had different motives in important particulars, and these are examined next.

KENYA:

Unlike Uganda, Kenya had a large section of Europeans who did not come merely as administrators or missionaries but as permanent settlers. Their immigration into Kenya was encouraged partly by the colonial government and partly by conditions that existed in Europe at the time of immigration.⁵¹ The overwhelming numbers of the white settlers were of British origin, and invariably most Kenya towns were planned and modelled on the British urban pattern. It has been remarked that besides some towns in French West Africa, Nairobi is the most Europeanised city in black Africa. However, the fact that Kenya possessed a large contingent of European immigrants is only part of the answer to the colonial phenomena of African towns. The Planning Mission which produced the Master Plan for Nairobi in 1948 saw nothing unusual in this resemblance. The report accompanying their plan stated that,

"The aspect of a town will differ according to the colonial power responsible for its administration. The British will excel in delightful suburbs and ample space for sport. The Latin will raise imposing public buildings, avenues, and statues in public places, all very reminiscent of Europe. Towns will vary according to the degree of racial segregation between European and Asians as in Zanzibar, or a spontaneous kind of 'nucleation' as at Kampala or very clear divisions (with some mixed quarters) as in Johannesburg. Africans again may live in townships built by them and not subject to much special municipal control, or be housed in municipal locations. Large employers may provide private compounds. Progressive towns may develop native suburbs or villages. There are some African satellite towns such as Alexandra outside Johannesburg."⁵²

Although there was tacit discrimination and segregation of races in both

Uganda and Tanganyika during the colonial rule, the policy was not legally sanctioned. The situation was slightly different in Kenya for with a large community of European settlers segregation was often written in the urban laws of the territory. The segregation would be implemented not only in the planning measures but also by the enforcement of urban pass laws that prohibited Africans from entering and staying in urban centres without justifiable excuse. In 1937, Douglas Brummage, one of the most influential district commissioners in the Kenya colonial administration articulated the pass laws in the following terms:

"It seems only right that it should be understood that the town is a non-native area in which there is no place for the redundant native, who neither works nor serves his or her people, but forms the class from which professional agitators, the slum landlords, the liquor sellers, and other undersirable classes spring. The exclusion of these redundant natives is in the interests of natives and non-native alike."⁵³

Only those Africans who were gainfully occupied were to be allowed to remain in the town; anyone else could be expelled. Moreover, unlike Tanganyika and Uganda, no areas within or outside the towns were declared locations for the general occupation by natives. Those which were so declared were reserved and intended for the Africans who were in the employment of the urban authorities and of the colonial administration. In Tanganyika and Uganda if an African went to a place habitually known as European he or she might be ignored or served with such indifference and rudeness that no return visit was contemplated. In Kenya he or she would be chased out and in some cases arrested.⁵⁴ Thus, the plight of the urban African in Kenya during the colonial period was worse than

that of his counterpart in the other two territories.

Again unlike the other two countries, the Kenya law that provided for the accommodation of the employed Africans was permissive rather than obligatory. In this respect the Kenya urban African was worse off than the South African blacks of the same period. Section 43 of the Municipal Corporation Ordinance made the following provision:

"The council may with the approval of the Governor lay out on lands under its control such locations for natives as may be deemed desirable, and erect suitable buildings thereon, for the occupation of natives, and may with such approval compel all natives residing in the Municipality, except such as are employed in domestic services and are lodged on the premises of their employers or such as are exempted by the Governor, to reside within such locations."⁵⁵

Under a similar law in South Africa, a Municipality was under a duty to house all Africans not accommodated by their employers. Further, the South African Minister of Native Affairs had the power to compel a neglectful municipality to make adequate provisions.⁵⁶

The consequences of ignoring the existence of the urban Africans other than those in government employment were most demoralising on those Africans. Some of the more liberal employers earmarked pieces of land on their estates or business premises and erected simple buildings to accommodate African employees. In the majority of cases the African had to solve the problem of housing on his own initiative as a result villages sprang up around the towns in the early days. As most Kenya tribes did not have the strong tradition of chiefs as in Uganda many of these villages were devoid of law and order; developments were uncontrolled. The Africans used traditional methods of buildings and such material as

they could lay hands on such as corrugated iron, and sacking. As the villages grew and developed the demand on the part of the white residents in the towns to remove them became more insistent. The medical officers were persuaded to condemn houses in such villages as a danger to health and when they complied the houses were demolished. In 1923, Kaburini and Masikini in Nairobi were removed as health hazards and the inhabitants went to new locations outside the city. One of the new locations was Pangani. This too was demolished in 1938, this time with some compensation to the inhabitants but without any direction as to where they should go next. Some of them moved to Shani and others to Moyo. Meanwhile, the municipality's own location for the Africans employed in the government and in its own departments was becoming a slum. This was Pumwani. In 1948 the residents of Nairobi, mainly Europeans, were demanding and agitating that it be destroyed. These demands were vigorously opposed by some of the other Nairobi residents, especially the Asians who had managed to establish profitable shops and businesses in Pumwani and were exploiting the African residents there.⁵⁷ The demand to destroy the location can be appreciated when it is realised that besides providing communal water service and a water-borne sewerage system, the Municipality of Nairobi provided nothing else by way of planning or development:

"The conditions under which natives are living in Pangani and Pumwani villages are highly unsatisfactory; at the former place they are deplorable. Overcrowding, filth and stench are the order..... Similar conditions prevail in several other parts of Nairobi. Add to unhealthy living conditions, lack of proper control over thousands of people, most of them no longer under various systems of tribal authority, and you have as a result, indiscipline,

vice and agitation." Thus, argued one colonial administrator who was campaigning for the removal of these places from the proximity of Nairobi.⁵⁸

The removal of the Africans from urban centres was not entirely racial. It was correlated to the question of labour and profit-making. Those who controlled urban development in Kenya realised that municipal authorities could not meet the costs of producing sanitation and housing without having to pay higher rates and taxes and as a result to suffer in the inevitable reduction of their incomes and standard of living.⁵⁹ The Planning Mission of 1948 drove this point home when they commented,

"Indeed the small revenue that can be expected from a pioneer population and the high cost incidence of urban administration in Africa are the key to much of urban life in this continent. Costs are inevitably high because public health measures must be elaborate. Roads are more extensive than elsewhere, the cheapness of land and size of estates thus off-setting the apparent cheapness of labour. Love of gardening and open-air activities, in the absence of alternative recreational outlets, the rates, and plentiful of land resources, spread the urban community over many square miles, leaving to future generations to fill in the gaps and make for denser settlement..... The issue is complicated by vested interests..... The good life of a town can only be achieved if there are sufficient number of persons to pay for it. The cost of an ample water supply must be spread over a large number of individuals in order to be economically possible."⁶⁰

It was therefore felt that the only way to maintain European standards in Kenya was to make no provision or to allow the least services for the urban African. Moreover, the planners as well as the policy-makers did not visualise a situation in Kenya when the Africans would ever share political power with the Europeans and the idea that one day the Africans would form the dominant group was as remote as could be imagined.

The majority opinion among the settlers and European residents was that Kenya would be developed on the same pattern as South Africa. The vision of the future then was a Kenya in which the European would enjoy perpetual dominance in all matters political, economic and social. The African existence would be tolerated in so far as it would be exploited in the interests of the dominant race.⁶¹

There were two other disadvantages that confronted the urban African in Kenya. The central region of the country which had traditionally formed the home of the Kikuyu, the biggest tribe in Kenya, was found to be the most suitable both climatically and economically for white settlers. It was subsequently carved up and distributed or claimed by the settlers who founded extensive farms. An ordinance was passed to exclude Africans from buying or leasing any lands classified as European. Moreover, no African could be employed in a position of responsibility or as manager on any European land or farm without the express consent of the Governor of the territory. Thus, the Africans who regarded these areas as homeland found themselves dispossessed. The other alternative of being urbanised was, as we have seen, positively discouraged. The situation in the African reserves was not a happy one either. At least here one would have expected the Africans to found businesses and trade and to compete with the immigrant traders and businessmen. However, this did not happen; instead, the Indian dukawallah and European trading groups like the Boma Trading Company conducted monopolistic business in these reserves. They were the purchasers of local goods, guarantors of credit to any aspiring natives, forwarders of manufactured goods and the determinators of market prices.⁶² All this coupled with lack of welfare facilities such as hospitals, dispensaries, schools and clean water

became the seeds of discontent that would culminate in the Mau Mau Movement and its accompanying atrocities both on the part of the colonialists and the nationalists. The movements would lead to eventual independence to the horror of those settlers who had had a vision of Kenya as the African country of the whiteman. Their feelings in the face of imminent independence were summed up by the then Governor who saw the release and ascendancy to power of Mr. Jomo Kenyatta as the doom of civilization in East Africa. He described Kenyatta as the leader to "darkness and death".⁶³ This view stands in sharp contrast with the current opinion among many of the Europeans who stayed in Kenya after independence that the same leader has had a stabilising influence on the multi-racialism of the country and is the guiding force behind Kenya's economic progress.⁶⁴

TANZANIA:

Until the act of union in 1965, Tanzania consisted of two separate and independent states, namely, Tanganyika and Zanzibar. The former is the largest territory in East Africa while the latter consisting of the islands of Zanzibar and Pemba is a mere 640 square miles in area.⁶⁵ The two countries had, before union, experienced different kinds of colonial administration and had developed differently in many respects. Zanzibar which became a Protectorate at an earlier time had during the colonial period enjoyed a greater measure of independence in her internal affairs than any other British possession in East Africa. Internally, the islands had been governed and administered by the Arab Sultans. Its relationship with the United Kingdom was similar to that accorded to the Buganda Kingdom which has already been examined. The

planning, the development and architecture of Zanzibar towns are Arabic in inception and character; and apart from the colonial administrative offices and residents and the African residential quarters the Arab ruling class were left largely to themselves to develop Zanzibar's town according to Arab traditions. Moreover, being smaller in size and population, it possesses one important town by the same name and because of this the comments in respect of urban planning and development of Tanzania shall be confined to the mainland of the union.⁶⁶

Tanganyika experienced the rule of more than one European colonial power, the second of which, Britain, governed the territory as a trustee on behalf of the League of Nations and later the United Nations Organisation. The country was first occupied by the Germans and after the First World War with the defeat of Germany and the creation of the League of Nations, the League declared Tanganyika a trust territory and a mandate over it was given to the United Kingdom to administer it. Thereafter the British policies relating to urban planning and development were similar to those that have been observed in relation to Uganda and Kenya. Further, before German occupation, Tanganyika had been on the direct routes of Arab traders to the hinterlands of East and Central Africa and on these routes trading posts and Arab settlements were founded. These were later to form the sites of towns and urban centres in the development of the country. In their journeys the Arabs attempted to spread the faith of Islam to the local inhabitants and their chiefs and many of these were converted. As a result a new sub-culture emerged from the converts who developed their own way of organising settlements and building houses. The people who belonged to this sub-culture came to be known as Swahili and Kiswahili houses can

be seen scattered all over East Africa with the greatest concentration in the towns of the coastal belt. Consequently, urban land use and development in Tanganyika have been influenced by four main traditions, namely, Arabic, German, British and Kiswahili. But as in other East African urban centres, there is always to be found sandwiched between these four phenomena, two other cultures namely African and Asian. Many buildings in East Africa, especially religious and residential ones are Asian in outlook and architecture.⁶⁷

Writing on the architecture of Dar es salaam, Casum states,

"Some buildings of Sultan Majid's Dar es salaam of the 1860s survive on city Drive. These are the present White Fathers' House and the adjoining Seyyid Barghash Building, now used as the customs headquarters..... Both in its style and construction, the Old Boma includes a number of features traditional of East African coastal architecture..... A number of German buildings survive in Dar es salaam, most of them close to the harbour. Though the important group of government offices constructed in the 1890s near the Eastern end of the Front are of a simple classical style, without Islamic influence, most other buildings of this period reflect in greater or lesser degree the older techniques and styles of coastal masonry - most impressive Ocean Road Hospital and State House, City Hall, New Africa Hotel..... formerly the Kaiserhof - a German officers' club. The Lutheran Church opposite with its profusion of little tiled roofs would be more at home in the Bavarian Alps."⁶⁸

It has been stated that many of the German buildings in Tanganyika were constructed to demonstrate German prestige.⁶⁹

Dar es salaam was declared the capital of Tanganyika in 1891 by a decree from Berlin. In May of that year a Township Ordinance was published and a planning scheme prepared. During the German occupation

a great number of public buildings and other projects such as the governor's palace, government offices and quarters, streets and port facilities were undertaken. The German colonial administration also introduced planning rules and regulations which supplanted Islamic and traditional law. At the termination of German occupation there were two outstanding problems. Firstly, the Asian section of the town was overpopulated and posed the problems of sanitation. Secondly, the town lacked an efficient drainage and sewerage system. On September 4, 1916, Dar es salaam fell into British hands. As a result of the war, developments in the town came virtually to a standstill between 1914 and 1918. When Britain acquired the mandate it was at first reluctant to commit itself too strongly to a country which was only a mandate. However, with the enlarged administrative staff from Britain it was inevitable that new offices and residential quarters should be built. Attempts were also made to build a proper sewerage system, install piped water, and the streets were hard surfaced. Physically, the biggest single development at this time was the creation of the "Mnazi Moja", an open space that separated the closely settled Asian sector of the town from the African Sector. It was not until the end of the Second World War when enough capital had been collected in Tanganyika and larger post-war funds for colonial development were available in Britain that planning and development of urban centres began to be taken seriously. In 1949 Dar es salaam became a municipality and by the 1950s new buildings had sprung up in all parts of the Municipality as well as new suburbs at Changombe, Temeke and Oyster Bay.⁷⁰ Britain had to administer the territory in accordance with the terms and conditions laid down by the League of Nations. The understanding was that the country would be developed primarily for the interests of the indigenous population. This meant that in planning and developing urban centres the interests of the Africans should not be ignored.

It further meant that the colonial administrators would refrain from establishing segregation of the races whether de jure or de facto. However, what could not be established legally was in fact established through urban regulations and economic conditions. The zoning and building regulations within the urban centres called for such high standards that the majority of the Africans who were in any case on the bottom of the income ladder could not meet these standards. They therefore tended to establish themselves outside the urban centres and within the peri-urban areas outside the jurisdiction covered by the regulations. Thus John Leaning comments,

"Somewhat removed from the commercial centre and far removed from the low density area is the high density area intended for Africans. In these areas the building requirements are minimal. Most of the houses are of a swahili type and between 50% to 70% of them are of traditional mud construction..... The average lot with a five room house would have a population of 10 to 15 people in three or four family units."71

The areas of the greatest growth in Tanganyika towns are those called squatter or illegally settled areas that surround the towns. Most of the buildings in these areas have been constructed under the Kiswahili type of architecture. African houses in most Tanganyika towns were built by private entrepreneurs many of whom were often Africans. The system allowed greater personal choice of location while encouraging a growing Tanganyikan entrepreneurial class to develop a firm commitment to urban life. There are many African families long settled in the towns that have been influential among the working class. There is also a considerable number of African landlords who let the rooms of their

Kiswahili houses and who have been a stabilising influence.⁷² Another point that may be mentioned in connection with urban centres in Tanganyika is that the colonial authorities did not always leave the African quarters to evolve on their own as in Uganda or demolish them whenever the dominant urban groups complained that they were public nuisances. On the contrary, attempts were often made to control their development and rudimentary community services such as water, sewerage works, roads and lighting were installed. In cases where it was felt very strongly that the houses were hazardous to life and health, they would be demolished but the owners would be paid compensation with which they would construct other houses in alternative locations.⁷³ It may be concluded from this that notwithstanding the inferiority of their areas and developments, the Tanganyikan urban Africans fare slightly better than those in Uganda and Kenya.

CONSEQUENCES OF COLONIAL POLICIES:

The East African Royal Commission Report in 1955 stated that for many years the Africans were regarded as temporary inhabitants of the towns in which they worked as unskilled labourers. They lived in traditional huts either inside or outside the township boundaries, and when authorities found it necessary to provide them with accommodation, it was on the assumption that they would work for short periods in the towns unaccompanied by their families and would return to their areas of origin. The commission disapproved of this policy and recommended that towns in East Africa should be integrated. This was an improvement on the memorandum of the Joint East African Board in 1943 which saw no

objection in segregation but urged that "outside the urban areas the government should impress on owners of estates, farms and mining and other properties, the importance of extending improved housing conditions for their (African) employees." The Board also had recommended that the town planning or other authorities should reserve areas of land large enough to permit proper planning of native dwellings and to provide adequate amenities.⁷⁴

The reaction to the Report of the East African Royal Commission was mixed. The Governors of both Tanganyika and Uganda accepted its recommendations with the latter commenting,

"There can be no doubt that the commission is right in laying down as the main object of policy the building up of integrated town communities in which Africans play their full part with others. In the past towns have come to be regarded by Africans as places for Europeans and Asians; this is partly due to the system of administration and planning of towns which was adopted as a result of past governments' policy",

and adding the caution that there could be no rapid solution to the problems of the towns and that they were to be tackled gradually since customs and attitudes do not change except by a gradual process.⁷⁵ The Governor of Kenya was unable to agree with all the recommendations. He rejected the view that the Africans presented a problem in Kenya towns. He thought that the Commission had misunderstood the situation. He stated that the towns in Kenya were inhabited by the Europeans and Asians and these towns were well laid out and of a good standard. The Africans did not live in towns and therefore could not be regarded as a problem. He doubted the wisdom of integrating the towns since this

would mean the lowering of standards. His view was that the standards should be kept because they were building for posterity which might blame them if the standards were to be otherwise. He concluded by saying that they had been improving African housing in African locations and that the new housing estates in Nairobi and Mombasa "especially with special recreation halls and clinics and so on, are very good indeed."⁷⁶ The Europeans of East Africa found cause to challenge the findings and recommendations of the Commission, and this challenge was reflected in an article in the East African Economic Review:

"In the Royal Commission there were chosen a number of eminent men, but men from another country with their ideas to some extent coloured by the circumstances of that country..... However similar in many ways the people of the other country may be to ourselves, the economic and social circumstances in which they live are very different from our own....."⁷⁷

Thus, the first consequence of the planning and development policies pursued in East Africa was a disagreement between the dominant race in the region and their 'mother' country as to the degree of development that should be allowed to the Africans. With political and other pressures on various fronts the latter view was to prevail and the East African countries would obtain independence within less than a decade from the Commission's Report.⁷⁸

The urban centres of colonial East Africa were dominated by non-indigenous residents who were mostly Asians and Europeans. The latter included large numbers of administrators, professional people and industrialists, while the former were mainly traders, artisans and commercial proprietors. Between them, the two races controlled urban life in the region notwithstanding that they were always outnumbered by the Africans in those same areas. The presence of the African in towns was

regarded as temporary rather than permanent. He was supposed to visit the town during the day, go only to certain places, finish whatever business brought him there and at the end of the day return to his village home, wherever it might be. There was but little appreciation of the fact that for many urban Africans, especially those who had had some education, the town transformed their lives and they no longer wished to be confined to the dull life of the village. For them the town had become a home and a place where they wished to come and go as they pleased without any kind of restriction. Thomas and Scott may have expressed the general official attitude to the urbanisation of East Africans when they wrote in 1935 that,

"There is no evidence, however, of a tendency on the part of the natives to congregate in the townships..... The native is fundamentally a peasant, whatever his rank or stage of education may be, and neither understands nor has any sympathy with a manner of life which is not intimately connected with land,"⁷⁹

but few of the urbanised Africans then or later would have agreed with this opinion nor have any scholars studying that period of urbanisation found any substantial evidence to confirm what Thomas and Scott states.⁸⁰

Symbolic perhaps were the placards in most major towns indicating which public conveniences were of the Western (European) type, and which were of the Eastern (Asian) type, with no reference to conveniences for Africans; and when the latter were forced to the nearest bush within the city to satisfy the call of nature this was often given as evidence of how unsuited they were for urban life. Thus, the town was an island inhabited by residents who had little in common with the people around them.

There were other consequences which were more serious as far as the future development of the towns was concerned. It was in urban centres that the economy of the region was planned, managed and controlled. It was the commercial hub of the towns that attracted investments and yielded large profits for the residents. All the political and economic policies were discussed and determined in the towns. It was there also that banking and credit facilities existed. All the import and export centres, licensing techniques and market conditions were available and utilised by those closest to them, namely, urban dwellers. All the experts in planning and development lived and operated in towns. The exclusion of the Africans from these opportunities and facilities meant that they could not acquire the necessary knowledge to compete with the non-Africans who had free access to them. It also meant that after independence the new governments would continue to carry out the functions which have been enumerated. In cases where it was necessary to employ local personnel it meant a lowering of standards and considerable delays in the implementation of policies and execution of works.⁸¹

The Africans who were allowed within the towns, at any rate the majority of them, consisted of the labouring class who did not earn enough money to save for investments that were available in those towns. The few Africans who earned sufficient wages to have been able to invest were neither encouraged by the colonial government nor welcomed by the immigrant businessmen who held a monopoly of these investments. The effect was that the governments continued to rely on minority communities for the moneys required for urban development and because such money invested in urban schemes yielded greater profits the minority races became wealthier while the Africans became poorer. This resulted in a number of social problems. First, the success stories of urban living attracted

more and more rural Africans who flocked to the towns to seek adventure and employment. The glamour of the town's reputation became compelling even though most of the stories about economic successes were untrue as far as the Africans were concerned. Most of those who came found that unemployment was rampant and the sub-standard education they had received at the village school was not adequate to enable them to compete with townsmen. Labour became plentiful and the Europeans and Asians could afford to employ these Africans at the lowest wages possible. This was a period when there were no statutory minimum wages for urban workers and when trade unions had not been established for the Africans.⁸² Those who could not find jobs were led to crime, prostitution and violence.⁸³ Secondly, a great deal of resentment grew up among the Africans against the Europeans and Asians who were seen as exploiters of the indigenous population. The resentment was to last long after independence. It was to be utilised by the nationalists in demanding the right of self-determination for their people and of independence and when this came it was to be used to legitimise the nationalisation of property belonging to the minority races and to justify their expulsion from East Africa.⁸⁴

Because the Africans were not regarded as an urban community they were denied a franchise in the town government. All the councillors, Mayors and permanent officials had to be either European or Asian. This meant that the Africans were denied the knowledge and art of urban administration. This would be a serious matter for the post-colonial governments deciding to set up Africanised urban governments. It would mean that the only local personnel they could rely upon were those who might have studied local government in theory but who had had no practical experience of how such a government operates. The questionnaires sent

out in respect of this study revealed that of the towns which responded more than 80% of their personnel appointed since independence had had no previous experience in urban administration. Nevertheless these are the same officials who are responsible for vital areas of urban government such as the formulation and implementation of development policies, land use planning, finance and licensing of all kinds.⁸⁵ The examination of the Allen's Report and other reports show the shortcomings of the newly recruited officials of these urban authorities.⁸⁶ Lastly, the colonial policy created a distorted view of the town in the minds of many Africans. Few do appreciate the position occupied by the towns in their countries. For many it has remained a place where one is forced to go and earn a living or meet government officials. It has not dawned on many East Africans that the town can be as much a home as the village from where they came originally. Thus, even after independence there is still a number of people who continue to spend their savings on unprofitable village houses and projects or who hoard such savings instead of investing the same in urban schemes and projects of development. Such people, if they work for the government or urban authorities may prefer to live in residential quarters provided by these bodies instead of acquiring urban plots of land and constructing their own houses. In cases where the construction has been possible it has been done with the sole intention of regarding the house as a source of income rather than as an owner-occupier home. A considerable number of civil servants and businessmen who see the financial advantages of acquiring urban property have done so and leased it to non-Africans or to personnel of foreign embassies and international organisations instead of occupying them themselves. Admittedly, few of their countrymen may be able to afford renting the property but in any event they too might be attempting

to acquire savings to do the same thing. Among those who found that they had to live in towns there were significant numbers who could not differentiate between the conditions of living in a built up area of an urban centre and those of the open space of the village. They have lived in the towns and continued to exercise the traditions and exhibit the habits of the village atmosphere. In both Nairobi and Kampala health officials have complained about residents who grow food in their back gardens and keep goats and fowls in their flats and houses.⁸⁷

PART B: URBAN PLANNING AND DEVELOPMENT SINCE INDEPENDENCE

"It is rather surprising that the 'impact of Nationhood' on town planning very often instead of resulting in the emergence of genuine indigenous ideas for the Africanisation of the settlements has meant that town plans which are fundamentally still those of colonial times have only been modified by addition in the city centres, of buildings in super modern European or even American architectural styles, standing in sharp contrast to the rather primitive living quarters of the ordinary African."⁸⁸

Thus, the same writer who criticised the urban planning of the colonial era found it necessary to criticise urban planning and development that has taken place in East Africa since independence. He and other observers of the post-independence planning scene have not discovered any distinctive and appreciable departures from the colonial experience. The colonial towns have been extended and the streets renovated. The remaining gaps in the civic zone have been filled with the Hiltons and international hotels of considerable height, European architecture and designs.⁸⁹ The gaps in the commercial zones have become sites for multi-storey commercial buildings. The excellent residential quarters formerly reserved for Europeans and Asians have been requisitioned or bought and taken over by the new African elite. Meanwhile the ordinary urban African and the peasant have continued to reside and scrape a living in the pre-independence shanty towns and slum dwelling. The rural African has not seen any change except that whereas before he was confronted by white and brown rulers who dominated the urban life the colour is now predominantly black but the conditions and reactions on both sides of affluence have hardly changed. The Minister for planning and development may be able to pronounce proudly that these changes are signs of economic development. He may even state that they represent a positive attempt to project the towns

as truly African. In so far as the African elite are to be found in the quarters previously occupied by non-Africans, the Minister may be literally correct. And in so far as the policy-makers, the managers, staff and workers in many of these hotels and commercial buildings are African, they represent some progress in Africanisation. However, the majority of the people who benefit from the facilities provided by the institutions are non-Africans. It is they who are likely to rent office accommodation in the ultra modern commercial buildings.⁹⁰ The hotels cater mainly for the affluent in East Africa and most of them are European or Asian. The rare occasions when these hotels receive large contingents of indigenous customers are those when there are public receptions or international conferences and the indigenous 'customers' happen to be involved in those events either as officials or invitees.⁹¹ But for the other six days of the week the beneficiaries of the good food and excellent services available in the hotels are non-Africans who may be residents, government officials or tourists.⁹² It was noted earlier that the German intention in constructing imposing buildings in Dar es salaam was to reflect the prestige and importance of Germany. There can be little doubt that many such constructions have been authorised in East Africa and in many parts of Africa with the sole aim of impressing upon the beholder how important the particular country regarded her prestige and it cannot be said that in promoting that aim the policy-makers considered the basic requirements of their people.

Since independence, the East African Governments have continued the colonial practice of calling upon foreign experts to come and help them solve the problems of urbanisation and development planning. The only difference is that whereas the colonial power invariably resorted to its own planners from Britain or other parts of the British empire

the post-colonial governments have had the freedom to invite experts from any part of the world including the United Nations. Indeed, the current policies for urban planning and development in East Africa are based on general recommendations prepared and submitted by United Nations missions which were specifically invited to East Africa by the respective governments. On the other hand, individual Master Plans for specific towns especially those of Nairobi, Dar es salaam and Kampala have been made with expertise advice from Britain and Canada.⁹³ It may be useful to examine the work of these Missions in the context of urban planning in East Africa since independence. Shortly after independence a conference on the problems of urbanisation and urban planning was held at Addis Ababa, and mainly as a result of the deliberations there, the East African Governments made representations to the United Nations specialised Agency to have an urban planning team for each country.⁹⁴ For Uganda, the team appointed consisted of an urban sociologist as leader, an adviser on local government finance, a physical planner and a public health engineer. The initial terms of reference for the team were to produce a Master Plan for Mengo.⁹⁵

The team became convinced that its terms of reference were unnecessarily restrictive and should be amended to include the whole of Kampala and that more money should be given for their expanded work. This request was granted and the team was accordingly designated - "The Kampala - Mengo Urban Planning Mission."⁹⁶ The team was based in the Department of Town Planning of the Ministry of Regional Administrations and collaborated with the then Municipality of Mengo and the Buganda local government. The team made its report and submitted it to the Uganda Government in 1964. Among its important recommendations were the following:-

- (a) That Kampala should base its plans for expansion upon commercial, institutional and residential uses and not upon major industrial expansion of the land.
- (b) That long range Master Plans for both water supply and sewerage should be prepared with the assistance of the United Nations Special Fund.
- (c) That a panel of East African University experts should be organised for the purpose of making their technical knowledge and advice more readily available to government, and
- (d) That the team's work should be continued by another United Nations Mission comprising a physical planner as team leader with the support of associate experts in the fields of architecture, housing, regional planning, social and economic analysis.

In fact the last recommendation was taken up immediately and the United Nations Kampala-Mengo Regional Planning Mission was appointed and continued the work of its predecessor from 1964-1966. The terms of reference for the latter team included the concept of a Metropolitan region and extending its long-range projections to the year 2000 A.D. We have seen that the same recommendation was tentatively made for the Nairobi area in Kenya.⁹⁷ The report of the second team was finally published in 1968 in a series of studies entitled "Kampala-Mengo Regional Planning Studies."⁹⁸ Among the team's new recommendations was one which seemed to conflict with the first team's observation in respect of industrialisation. The new team observed that,

"The development of industries in Kampala is of very considerable importance and immediate steps should be taken to secure the reservation of land for industrial expansion and to instal urban services."⁹⁹

It may be speculated that the contradiction between the two recommendations may be explained by the fact that whereas the first team was led by an urban

sociologist who might have been aware of the social problems of industrialisation the latter was led by a physical planner who saw the technical possibilities of siting industries in the Kampala area.

In 1967 a third United Nations Mission was recruited with the name of U.N. Physical Planning Mission and with the object of expanding the work of the 1964/1966 team. The Mission noted that both the reports of its two predecessors lacked a considerable amount of basic survey data and therefore it undertook a detailed survey of the then land uses and the basic essentials of a master plan programme. Towards the end of its field work, the Government approached the Faculty of Law at Makerere University to undertake a research project in the legal ownership and occupation of the lands covered by the areas studied by the Mission and to propose any procedures of acquisition and compensation. Two members of the Faculty including the author were invited to undertake this work. The idea was that the two exercises would eventually be combined in one report. However, before the latter team could carry out their assigned research the United Nations Mission came to the end of its scheduled period and its report was completed and published in 1969. Thereafter a number of political incidents occurred which prohibited the Makerere legal team from continuing with their work.¹⁰⁰ In addition, the third mission produced physical plans for the Jinja and Mbale/Tororo Regions.¹⁰¹ 1968 saw the submission of the Final Report by a firm of consultant engineers who had been engaged by the Kampala City Council. The firm prepared a Transportation Plan for the Kampala area up to the year 2000 A.D. The World Health Organisation meanwhile was also interested in producing a plan for the same area. It had commissioned a firm of consultant engineers to prepare within two years a Master Plan for Water supply and Main drainage of Kampala up to the year 2000 A.D. The findings, proposals and recommendations of all these teams, missions and firms were submitted to the Uganda Government for study and approval.

Many of the recommendations were duly approved and the Department of Town Planning with the assistance of its expatriate staff, mainly British, were assigned the responsibility of producing Master Plans for the Uganda Urban Centres and these plans were to be based on the said recommendations. The Master Plan for the Kampala area was published in 1972 and it incorporates all the major proposals from these reports. However of the reports and recommendations a Ugandan planner who had no weight in deciding which to accept and reject has commented,

"The studies that were carried out were largely based on the elaboration of growth trends up to the year 2000. 'This approach was considered vital, especially in a developing country with a high population increase and an expected accelerating rate of urbanisation. It enabled the major growth and physical development problems to be highlighted and seen in clearer and proper perspective.'¹⁰² However, no attempts were made to initiate a short term physical development programme geared to the (National Economic Development Plan) or a co-ordination between national economic planning and physical regional planning..... especially as they facilitate effective timing and co-ordination of national investments."¹⁰³

In Tanzania, the United Nations team defined Dar es salaam sub-region as the economic and geographic unit of which the capital city was the hub. They envisaged a concept that would mean a restriction on the population increase of Dar es salaam and the parallel development of neighbouring centres such as Ruvu, Bagamayo, Kibaha and Kisarawe. Ruvu was suggested as a future industrial community due to its strategic location on the river and on the main Morogoro Road and the railway. Again their strategies were projected to the year 2000 A.D., and many of the recommendations have been incorporated in the current Tanzanian National Development Plan.¹⁰⁴

Besides the United Nations experts, expatriate staff from different developed countries continue to influence and design urban physical planning in Tanzania. Writing on this aspect of the planning process in that country Helleiner has observed that,

"The preparation of the 1969-74 Tanzanian Plan illustrates this problem well. The background for the plan was prepared in a collection of working parties on various sectors or policy areas (private sector representatives were not invited to participate in their deliberations) each of which tended to be dominated by expatriates: Their reports were collated and the plan document itself written by another small group of expatriates in the planning ministry. (Most of the key personnel who discussed and prepared the planning document which is to guide economic development for the 1969-74 period were gone from Tanzania before the year 1969 was out)."105

The last point that Helleiner makes is an important one and ought to be emphasized. We have seen that planning is a continuous process. From time to time a plan may have to be altered or amended to meet new conditions and circumstances. It is suggested that such changes are likely to be more orderly and co-ordinated if the people who devised the original plan are the same people who are instructed to carry out the amendments or alterations. On the other hand, where these have left the country, their successors, especially if they are of different ideological persuasion as often happens in Africa, may depart from the original plan or alter its objectives to such a degree that in perspective the work of their predecessors appears futile.¹⁰⁶

Since independence the political policy on urbanisation has been the discouragement of the creation of large urban centres. This is implied by a number of statements and decisions published since independence. On more than one occasion President Kenyatta has appealed to the "wananchi"

to stay at their farms and not come to the big towns in search of employment. The appeals have been largely ignored for a number of reasons. Apart from those already stated,¹⁰⁷ the majority of the 'farms' are nothing more than plots of land or tribal areas cultivated under traditional methods without a real possibility of providing adequate employment for the growing population of Kenya. Moreover, Kenya has maintained an almost open policy of welcoming foreign investors and industrialists who insist on establishing and investing in capital projects in the already overpopulated urban centres.¹⁰⁸ In 1968, a much more effective and legal measure was taken to encourage decentralisation of urban growth and development. It was provided that part of the revenue collected in the major towns would be transferred to the development of rural areas. In the case of Nairobi and Mombasa the share available to be distributed to the rural areas amounts to half of the G.P.T. tax revenue collected.¹⁰⁹ The Government has stated that it will continue to implement its determination to decentralise industry as well. We have noted that in contemplation of this general policy the Government attempted to decentralise the planning process bureaucracy.¹¹⁰

Kenya has further been fortunate in seeing, at an early stage, the advantages of doing research into urban problems before any specific physical plans can be formulated. The Urban Housing and Rural Development Unit attached to the University of Nairobi has undertaken a number of studies in specific problems of urbanization, urban planning and housing and studied them. Most of these have been published in form of sessional papers and have proved very valuable to physical planners.¹¹¹ Besides the Unit, the Department of Town Planning undertakes research studies of its own. In 1970 the Regional Section of the department was involved in the collection and analysis of data for five Provinces of Kenya. In 1967 it had completed and published research findings for the Central Province. The Central Province

had been selected because of its proximity to the Department's offices in Nairobi and for the fact that the Province is compact, fairly densely populated and therefore well disposed to regional analysis of this kind. The study covered such matters as the size of the area, its topography, geology, number and sizes of family units and the total population, urban and rural densities, types and sizes of public services and amenities, administration, transportation and communication, trade and commerce, industry and power; and the probable future growth of each of these matters.¹¹² At the same time that the Central Province Study Report was published, two other reports, specifically related to tourism were completed. One dealt with the problems arising out of rapid expansion of tourist facilities for foreigners at the coast, and the other with future recreational demands of the local population especially in central Kenya. Ligala has described the latter two reports in the following terms:

"The aim of the paper on the Kenya Coastline Development was first to familiarise relevant government departments, local authorities and private developers with the natural attributes of the Coast Province, to describe how these assets had been exploited so far, and then to set out the policies and plans which would control and stimulate their future development.... A plan was prepared to accompany this Report setting out the main tourist development zones (10 in all), the land ownership and the existing infrastructure..... The Report on the Lake Naivasha area mainly concentrates on the recreational demands of the population of central Kenya in general, and Nairobi in particular. Based on the premise that the Lake Naivasha area could form the nucleus of the future public 'play area', the paper outlines some of the problems likely to occur if piecemeal development (already taking place) continues; it then defines the possible extent of a national recreation zone and finally suggests necessary administrative machinery to organise the project."¹¹³

Not all the research currently used in the urban planning of Kenya is done by professional planners. For instance, the Department of Town Planning has been able to utilise the findings of Norbye, an economist, in their plan

objectives for most major towns of Kenya including Nairobi, Mombasa and Kisumu.¹¹⁴ The proposed Mathare project was to have included someone with legal knowledge.¹¹⁵ The importance that the Kenya Government attaches to multi-disciplinary research in planning and development is evidenced by the fact that the current National Development Plan includes a section on this very topic.¹¹⁶

Inspite of the considerable research undertaken in Kenya the towns there have remained essentially those of the colonial period and since independence the practical effect of urban planning and development has been such that many of them have come to resemble European cities in outlook, layout, architecture and design. In 1948, the colonial mission which prepared a Master Plan for Nairobi stated, inter alia, that "the town, if it is of importance will be European in style and have international connections; banks and business houses will use it for their headquarters."¹¹⁷ In 1970 an observer noticed that this phenomenon had been vigorously pursued during the period since independence and remarked,

"Nairobi is, then, one of the more modern cities of tropical Africa. It probably has a greater variety of available services, cultural institutions, entertainment facilities, and manufacturing plants than any city in tropical Africa. It does have problems of congestion, inadequate housing, and unemployment, but its future should be somewhat brighter than many counterparts if for no other reason than the burgeoning tourist trade."¹¹⁸

It can be stated without exaggeration that the facilities and services observed continue to be used and enjoyed by foreign tourists and the elitist class of Kenya while the problems affect the overwhelming majority of the Nairobi local inhabitants.

Johnstone Muthiora has posed four questions the answers to which

should guide urban planners in East Africa.¹¹⁹ These questions are 'Why?', 'Where?', 'How' and 'What?'. The first he sees as being an economic one. Some people argue that a newly developing country cannot afford the price of building a new town or a new city for its citizens. He dismisses this argument on the ground that ignores the fact that a well planned town can be a source of economic development. In answering the second question Muthiora is of the opinion that planners must rely on the available resources in the hands of social scientists. This is because the answer will be economic, social, political, aesthetic, cultural and spiritual and (legal). This will leave the physical designers with the task of figuring out the technological, geographical and climatic problems. In answering the question 'How'? we need a full co-operation between the social scientists and physical designers. This is because we are now dealing with man, society and nature. Lastly, in answering the question 'What?' we are immediately confronted by the question of size. This question is more related to demographers than to the designers at the outset. The old concept of static 'city' has lost its meaning. It is important to conceive the new town as a nucleus of an imaginary city of many millions. This will avoid the traditional type of planning which creates a vicious circle of the old city devouring its own self in order to grow.¹²⁰ The development of the urban centres in East Africa reveals most clearly that none of the four questions has been considered or answered in a satisfactory manner. Implicit in these questions there is yet another question, that is "for whom are the towns and cities planned?" So far the results of urban planning in East Africa show that what the planners have in mind are the tourists and the elite. Yet, the majority of the city dwellers who face acute problems of urbanisation are those outside these two classes of people.

The definition of development as currently understood in East

Africa does not seem to be related to the people. For example, a city may have ten thousand of its inhabitants living comfortably in a shanty town which possesses minimum social services and amenities. The shanty town is described as undeveloped. A developer may persuade the Government to acquire the buildings in the shanty town by compulsory powers because he wishes to construct multi-storey blocks of flats and offices. The people will be evicted with the minimum of compensation and the blocks will be constructed in the best Western architecture and design. Open spaces and recreational grounds will be provided for, Roads and streets will be hard-surfaced and lighted; water and sewerage systems will be installed. Thereafter, only members of the elite, staff of foreign embassies and international organisations operating in the country, and tourists will be able to afford to rent the flats and offices. These people will perhaps be one thousand in number.¹²¹ The government department concerned will be congratulated on its achievement. Certainly, the location will appear neater and more beautiful than when it was a shanty town. But by this time the ten thousand residents who were evicted will have been forgotten. Many of them will have moved into other shanty towns or into the slum areas of the town or city. Others are likely to have found another undeveloped location and turned it into another shanty town through unplanned and unregulated development. A number of them may have decided to engage in criminal activities and prostitution. But most of them will not have forgotten that they were evicted to give way to the more privileged members of their society. Those who have moved into new areas are likely to face similar evictions in some years to come when the government finds money to carry out a similar exercise. There can be little doubt that a plan that evicts ten thousand citizens in order to accommodate a thousand people many of whom are non-citizens is a retrograde step. The purely professional planner may admire and applaud the new blocks as modern

development but the possibility that the development is likely to lead to unrest, internal insurrection and ultimately revolutionary movements cannot be ruled out.¹²² Arguments have been advanced to justify this kind of planning and development. It is said that with the limited resources at their disposal, the developing countries can only afford to initiate small projects capable of benefiting a few thousand people at a time. It is further argued that the planners are building for the future and therefore cannot afford to lower the standards of construction with a view to accommodating more people. It is also argued that most of the money used in the construction is obtained from outside sources the controllers of which insist on buildings of specified sizes and designs.¹²³ Against these arguments we may advance the following:

There have been alternative proposals and schemes initiated and designed to ensure that the limited resources available can be utilised in a manner that will benefit greater numbers than has hitherto been possible. The experimental schemes in East Africa proposed by United Nations Teams involving self-help construction and nucleus building have not been fully explored by the planners.¹²⁴

The proposals that taxation and rating laws should be modified to enable more citizens to make savings for urban development have not been acted upon.¹²⁵ It has been shown also that building regulations could be re-

laxed to allow local methods of design and building materials to dominate urban planning and construction.¹²⁶

The scandinavian countries and certain provinces in Canada have been able to resort to their natural resource-wood-to build quality houses without introducing "European style architecture and materials."¹²⁷

The argument that planners are building for future generations and therefore cannot afford to lower standards is unrealistic. The problems of urbanisation such as congestion, lack of accommodation and of amenities affect the present population. What is needed for future generations is more reserved land for their needs.

The bulk of the available finance should be spent on alleviating the current urban problems and ensuring that the majority of the urban population is well provided with the necessary accommodation and modern amenities, only in this way will the present generation have the capabilities to participate in and appreciate developments intended to benefit its successors. The last argument may be more relevant but it could be overcome if those who receive and administer foreign aid and investments gave it a serious thought. It must be remembered that foreign money is not given free: It is accepted at a price. Whether this price is the high rate of interest, exchange of raw material or whether it is political or military strategy, the receiving country gives something in return. The receiving country never instructs the developed country which takes its raw materials or minerals how to utilise these and therefore the converse should also be true that any strings attached to foreign aid or investment that are not intended to benefit the public at large in the receiving country should be vigorously resisted. In the final analysis it is the receiving country which determines whether or not to accept such aid or investments and where there is convincing evidence that the terms and conditions of the 'donations' are likely to do more harm than good, or at best, to maintain the principle of laissez faire the country concerned should reject them outright and if need be the aid or investments themselves. Of the East African Governments, only that of Tanzania has so far given clear guidelines on the basis on which it will welcome foreign aid and investments. They must be such as will not conflict with the governments' policy of African socialism, self-reliance and the Ujamaa Villages scheme in the spirit of the Arusha Declaration.¹²⁸ It is interesting to note that since the publication of these guidelines Tanzania has continued to draw aid and investments from the same countries that give assistance to the

rest of East Africa. Further, there is no evidence that urban planning and development has suffered in Tanzania as a consequence of the Governments' stand.¹²⁹

There have been occasions when in policy-statements the Governments have given the impression that the overriding objective in urban planning and development is to provide better amenities for all the people and to accommodate as many as possible as well as to provide employment for urban dwellers. When this is the position failures cannot be blamed on the policy-makers or explained in terms of lack of commitment and initiative. Failures occur because the governments lack manpower, finance and technical assistance. Breese has observed that,

"Examination of the present status of plans for urbanization in many newly developing countries reveals a great gulf between the objectives for such planning and the practice. Although some countries have a policy that all cities over a certain size..... are expected to complete plans before a specified date, it is clearly impossible for cities to meet this requirement."¹³⁰

He gives the reasons for this impasse as lack of trained professional planning staff, shortage of funds and heavy reliance on expatriate advisers whose training and ideological commitment mean that they are only capable of producing feasible plans that are not suited to the local conditions and circumstances. However, there is also the other problem of poverty. Most urban dwellers in the developing country earn too little to afford even the sub-standard houses and services that may emerge after the lowering of urban standards of development. Thus, the United Nations Report on the World Social Situation has indicated that the pressure of population on land, which contributes to what is judged to be over urbanization in so many of the

less-developed countries, means that these same countries are in a similar sense "over-ruralized". This means that for the existing modes and levels of production in both the urban and rural sectors there are too many people who are economically undeveloped and 'overurbanization' is another way of describing the economic underdevelopment that characterizes the cities and their relation to the countryside.¹³¹

In allocating financial resources for urban development the politician is aware that the people who maintain him in power may not necessarily be the town dwellers. His interest in building up support among the 'people who count' may conflict with his goals for urban development. Among the people who count are the bureaucrats. Abernethy has described African bureaucracies as expensive instruments for change. They employ a large proportion of wage - or salary-earning labour. They tend to expand fairly rapidly in response to political pressures to extend the responsibilities of government and relieve unemployment, and their salary scales at the upper levels reflect the level of affluence of the former colonial ruler rather than the capacity of the new state to pay for its civil service. This can be explained on the ground that in the pre-independence period, there was an important nationalist demand that African civil servants be paid on the same scale as Europeans with similar qualifications. But moves to reduce the income gap between top African and European bureaucrats, at a time when Europeans were clearly the reference group for the nationalists, have only widened the income gap between top African civil servants and the mass of the people in the post-independence period, when the people themselves should be the reference group for their leaders. An ever-increasing number of graduates, both men and women, joining the public sectors of administration and industry earn salaries 25-30 times greater than the per capita national income. As Abernethy concludes,

"The result is that a high proportion of scarce governmental resources is spent simply to keep the machinery of government running. In Kenya, for example, 41.7% of the central Government's recurrent expenditure from 1962/3 to 1966/7 was devoted to wages and salaries, and Dumont estimates that the figure is closer to 60% for Dahomey."¹³²

CONCLUSION:

It has become apparent from the foregoing discussion that the objectives in the urban planning and development of East Africa call for a redefinition and reclassification. Emphasis must be shifted from the interests of the elite and the tourists to those of the majority, needy urban dwellers. The financial resources available have proved extremely inadequate to meet the requirements of a Western-orientated type of planning and development. The likelihood of increasing them so substantially as to cover the latter interests appears too remote to be contemplated at least within the foreseeable future. It is important therefore that development plans ought to be tailored to the real and practical needs of the ordinary people who live and work in the towns. The central theme of the new approach must be the production of modest and inexpensive development schemes and projects. Governments need to reassess the principle of creating prestigious constructions on grand scales and should instead concentrate and insist on allowing projects which will best serve the needs of the common people on a large scale. In any event, it can be argued that the imposition of multi-storey buildings and concrete blocks in the commercial zones, the construction of terraced brick houses and detached stone mansions in the residential areas, the ultra-modern institutional buildings scattered everywhere in the heart of the town and punctuated by boulevards and acacia trees that characterise most East African urban centres, have given the elite, the successful commercial community and the tourists, more than their full share of modern development. The next phase in planning and development ought primarily to cater for the needs and interests of the remainder of the local population. The building of more expensive houses and commercial buildings should be left to the enterprise of individual developers and the private sector of development

where these are available. Any further public expenditure, at any rate, a substantial part of it, should be for the construction of well planned but cheap houses and trading centres for the ordinary townfolk. Golf courses, tennis courts and club houses should give way to community centres, football pitches, water supply and sewerage systems for the poorer members of the community.

The proposed change of emphasis will need political commitment of professional approach on the part of the planners. Suggestions to implement the change can be made and their feasibility may be assessed, but without such commitment and orientation very little can be achieved.¹³³ Nonetheless several methods of implementation may be suggested. First, the allocation of financial resources for the new emphasis must be determined by law and not left to the discretion of the administrative bureaucracy. This would avoid the situation that developed during the second Development Plan of Uganda with respect to housing construction. During the period the National Housing Corporation was expected to construct over 6,300 low-income and 600 middle-and upper-income housing units for sale and rent, in all important urban areas of the country. This was in 1966. By the end of 1970, the corporation had completed the building of 1,200 new housing units in total and had another 1,700 under construction.¹³⁴ The bulk of the latter were in the suburbs of Kampala where the corporation had decided that it would find purchasers and tenants for its completed houses. The overwhelming number of housing units in both categories belonged to the middle-and upper-income groups. The corporation argued that because of lack of finance it had had recourse to the private market for credit. This credit had been secured on strictly commercial terms, with repayment period of five to eight years. This, in turn had affected the rents which

the corporation had to charge in order to cover loan repayments. As a consequence of limitations imposed by financial arrangements, the strategy of the corporation had been to concentrate on middle - and upper - income housing until total rental incomes had permitted more attention to be paid to low-income housing programmes. Of the houses completed during this period a considerable number was requisitioned by the government for civil servants. Be that as it may, the Government had made a grant of 6.0 million shillings to the corporation. Part of the money borrowed came from the National Insurance Corporation - another parastatal body. Moreover, in 1969 it was announced that the National Housing Corporation had made a profit margin in excess of 8 million shillings. From this it can be argued that had there been a law obliging the Corporation to spend all public funds exclusively on the construction of low-income housing units, it would have spent its own funds, the government grant and the money borrowed from the National Insurance Corporation on such construction. There would have been more housing units completed for the low-income groups of the community and the housing units would have been more evenly spread throughout the country instead of being concentrated in the Kampala area.

Further, it is proposed that a full-time research committee should be established for the purposes of investigating and recommending better methods for implementing the new policy of planning and development for the community as a whole. Preferably, the committee should be composed of a surveyor, engineer, planner, economist, a sociologist, a doctor, a lawyer and a political scientist as well as an architect. The work of the committee will consist in examining the present health and building regulations, suggesting modifications to accommodate new types of building and construction and also to collate and analyse any other data that may be useful in the implementation of policy-schemes and projects. The

committee should have easy access to all policies and decisions whether governmental institutional or private. There should be full consultation and cooperation with institutions such as the universities, governmental research units, professional associations, trade unions and residential organisations. It is envisaged that these latter bodies will be encouraged not only to produce working papers in their specialised fields related to the realisation of this policy but will, from time to time, send representatives to the committee's regular meetings for discussions and debate. After the committee collects its evidence and reports to the relevant minister the latter should be under a statutory duty to publish the report. In addition, formal meetings between members of the committee or those who have been associated with and understand the recommendations, on the one hand, and interested parties and groups of the general public, on the other, should be held and encouraged throughout the country. Full coverage of the deliberations at these meetings should be undertaken by all the media of communication operating in the country. It is visualised that the outcome of the report and the subsequent public discussions will be to assist not only urban dwellers but also the population in rural areas who might take advantage of the cheap and inexpensive techniques that may emerge for planning and development in East Africa.

Finally, it is proposed that in adopting the new methods of planning boards and committees should be reconstituted. We have noted that the present composition of these bodies has tended to be dominated by professional planners whose knowledge is in many respects limited to physical planning, architectural designs and building standards. Because most of the planners are expatriate or foreign-trained the result has been the creation of foreign towns in East Africa. While it is conceded that the professional planners will continue to do the professional and technical work, the actual decisions as to what should be planned or developed requires

the effective participation of people whose judgment goes beyond the purely professional or technical. For this reason it is proposed that future planning bodies must include on their memberships representatives of other social sciences like economics, law, political science and sociology. They must also include representatives of institutions such as the hospitals, the universities, the church and the Chamber of Commerce. In this respect we are referring to the bodies which determine the objectives and goals of development of a particular planning area. The actual production of a detailed plan will continue to be the responsibility of the local planning committees in collaboration with the Department of Town Planning. But due to the fact that these latter also do occasionally lose sight of what is expected of them it is recommended that additional members should be drawn from the legal profession, economics and sociology. It is with the understanding that all these interests have been taken care of and the representations made that we next discuss the actual planning process.

SECTION III: THE URBAN PLANNING PROCESS IN EAST AFRICA

PART A: SUBSTANTIVE AND PROCEDURAL LAW

In a previous chapter the sources of planning law in East Africa were examined and discussed.¹³⁵ In this part we are mainly concerned with the detailed provisions of that law which relate specifically to the urban planning process. Also noted previously was the hierarchy of the planning authorities in the context of land use planning. These were said to be, in ascending order of importance, local planning committees, the Department of Town Planning, Town Planning Board and the Minister, or their equivalent in the respective countries. Consequently, an attempt is to be made to examine how these authorities use the laws in the exercise and performance of their planning powers, functions and duties. The attempt will deal with the law in both theory and practice.

The genus of planning powers, rules and regulations in each of the territories of East Africa is the Town and Country Planning Ordinance enacted during the colonial period and modelled on similar legislation in the United Kingdom. It was under such Ordinance that planning areas were declared, powers created and planning authorities established. Further, the Ordinance would establish machinery for the preparation and approval of planning schemes. And among other things it would provide for the acquisition of land, compensation and betterment as well as for the execution of planning schemes. Supplementary to the Ordinance were other ordinances dealing separately with urban and rural planning and development.¹³⁶ The influence which British planning laws had on the urban planning and development of East Africa can be exemplified by the fact that whenever the United Kingdom enacted a new law on the subject

the East African administrations followed suit; and in most cases they would copy the United Kingdom law almost word by word and adopt it for the region. For instance, the United Kingdom planning legislation inspired the Town Planning Ordinance, 1931 of Kenya while more specifically the Town and Country Planning Act of 1947 was the basis of the Planning Ordinances of 1948 and 1949 for Kenya and Uganda, respectively.

KENYA

The more detailed powers of urban planning in Kenya were contained in the Town Planning Ordinance of 1931 as amended in 1948. Sections 23 and 24 of the Ordinance empowered the Commissioner of Lands to approve the subdivision and use of Urban Land in the Country. The Ordinance was, from time to time, supplemented by land use rules and regulations which were consolidated in 1961 as The Development and Use of Land (Planning) Regulations.¹³⁷ Both the Ordinance and the Regulations continued in force until 1968 when new legislation was enacted.¹³⁸ In addition, there were special planning powers contained in the various Ordinances and Acts relating specially to Urban Authorities. These were in turn supplemented by ministerial statutory instruments and the approved bye-laws of those authorities. In 1967 the Kenya Parliament passed the Land Control Act which was necessitated by the critical political and economic importance of agricultural land. Its main object was to ensure maximum exploitation of agricultural land while promoting the increased participation of citizens in farming. "All controlled transactions in agricultural land to which the Act applies must have the approval of a Land Control Board." This is the effect of section 6 (1) of the Act; and under section 4 (1) (b) the sub-division of agricultural holdings, other than parcels of less than 20 acres in areas covered by the Land Control Act is a controlled transaction. In the following year the Land Planning Act was passed. The Act was intended to coincide with the 1931 Ordinance as amended in 1948 and provision was made for the former Act to supercede the latter in the event of conflict.¹³⁹ The objects of both laws are similar, and the principal planning authorities - the Minister, the Commissioner of Lands and the local planning authorities -

are often the same.¹⁴⁰ Thus, the Land Planning Act did not make any great change in the law inherited from the colonial era. It merely revoked the Development and use of Land (Planning) Regulations of 1961, as regulations, and reenacted them as part of the Act with amendments as to the bodies responsible for its administration. The Act applies to all areas in which the Regulations had applied but may be extended to other areas by the President. Land to which the Act applies becomes an interim planning area.

The 1968 Land Planning Act aims at ensuring planned development through the requirement that "no development be made within an 'interim planning area' without consent." Consent is to be obtained from a local planning authority which under the Act becomes an interim planning authority, or, from the Minister. In determining an application, the authority is bound by any relevant area or town plan approved by the Minister. The main difference between the Act and the previous law is in the method employed to control development. Under the former control is mainly through the statutory plan while under the Act it is through consent to individual applications. Menezes has commented that planning under the Act is more flexible than was the position under the colonial law. However, the comment assumes that there will be an adequate and efficient bureaucracy to administer the Act and understand the notions and objectives of individual applications coming before it. It has already been observed that such a bureaucracy is in great demand throughout East Africa.¹⁴¹

In a number of aspects, the Land Planning Act is more permissive than the colonial legislation. For example, it provides that a project that has not previously been considered, or a change in circumstances

can be catered for without the necessity of preparing amendment plans with the technical and procedural difficulties involved. On the other hand, the colonial legislation had restricted this approach by enumerating circumstances and conditions which would not require the necessity of formal amendment plans. It provided that a planning scheme "may provide for the replanning or reconstruction of any area within the scheme. Plots can be consolidated, and boundaries, roads, rights of way religned. The planning authority can require works to be carried out or may suspend certain works in progress."¹⁴² Nevertheless, the Act omits to provide for certain matters which were specifically dealt with by the former legislation. It does not provide for compulsory acquisition, compensation or the execution of any works other than the demolition and removal of construction made without consent. Nor does it permit the imposition of conditions when determining and approving planning applications. In this respect therefore the powers of the Act are limited and as Munyu Sisal Estates Limited v. The Attorney-General of Kenya clearly illustrated those administering the Act may have to resort to other relevant laws to fill in the omissions.¹⁴³ Concluding his observations on the Act, Menezes regrets,

"The passage of the Land Planning Act, 1968, would have been an ideal occasion for the revision of the planning law. Unfortunately the opportunity was not taken. Even the benefits of consolidating the Town Planning Act and the Development and Use of Land (Planning) Regulations, 1961, have not been gained. The duplication remains in large areas while the new Act fails to provide sufficient powers for effective action in urban reconstruction."¹⁴⁴

It is for these reasons that the powers of planning law are best understood by references to the pre-independence laws. Section 3 (1) of The Town

Planning Ordinance 1948 provides for the preparation and execution of "Town planning schemes" with the objective of providing for the proper development of land to the best possible advantage. The schemes are prepared by Preparatory Authorities appointed by the Minister. The Authorities may be the Council or Board of a Municipality for a Municipal area or local planning committees for other towns. The relevant authority in each case decides by resolution to prepare a scheme within its area and with the consent of the Minister, for adjacent areas as well. It may, as an alternative, decide to adopt a scheme prepared by any or all owners of land to which the scheme is to apply. If the scheme is approved by the Minister, it becomes effective upon being published in the Gazette. Section 19 (1) of the Ordinance authorises the Executive Authority of the planning area to enforce compliance with the scheme and to carry out any proposed works. Lastly, plans prepared and approved under the Town Planning Ordinance are deemed to be approved under the Land Planning Act. A Preparatory Authority ceases its functions in an area of the Interim Planning Authority if their areas coincide, and the former is accordingly dissolved.¹⁴⁵

TANZANIA:

As in Kenya and Uganda, the basis and conception of planning law in Tanzania is the colonial legislation. The earliest Township Rules were formulated in the 1920s.¹⁴⁶ The rules enabled the town authorities to demarcate urban land into four major use zones, namely, a residential zone for Europeans, a commercial and residential zone for Asians, a residential

zone for Africans and an industrial zone. These rules did not contain any adequate powers to control land use within the four zones and the residents or proprietors in them were left largely free to develop the land as they thought fit. In 1936, the Town Development Control Ordinance was passed. The Ordinance did not affect the zoning provisions of the 1920s Planning Rules nor did it interfere with the freedom of private developers beyond requiring them to seek approval if they wished to sub-divide their land holdings into plots. After the Second World War there was rapid development taking place in the country which created a need for a dynamic physical planning legislation. The result was the establishment in 1949 of a Town Planning Department with powers to direct and control urban development. In 1956 The Town and Country Planning Ordinance was enacted to replace the 1936 planning legislation. Like those of Kenya and Uganda, it was modelled on the British Town and Country Planning Acts. It made provisions for the declaration of planning areas, the formation of Area Planning Committees whose functions included the preparation or adoption and approving or amending planning schemes, the necessity of consent before any development could take place, acquisition of land, procedures to be followed for the granting of and appeals for compensation and powers to make regulations. One important organ created by the Ordinance was the Town and Country Planning Control Board whose members would be appointed by the Governor-in-Council. Until independence it was this Board which shouldered the responsibility for the policies and planning decisions of urban development in Tanzania. It often delegated its powers to the Area Planning Committees whose outline and specific plans and schemes were subject to the Board's approval. In 1961 with the coming of independence the 1956 Ordinance was revised and the Minister responsible for physical planning was made the 'source of planning powers' in

Tanzania.¹⁴⁷ The revised law made provision for matters which must be included in a planning scheme such as roads, public services and open spaces. In 1963, the Freehold Titles (Conversion) and Government Leases Act made obsolete those sections of the ordinance which dealt with acquisition and compensation of freehold land.¹⁴⁸

Since independence, Tanzania, more than any other East African country, has been confronted with the greatest measures of urban land law reform and development. In 1965 Parliament enacted the amendment to the Land Acquisition Act in order to exonerate the government from paying compensation, on compulsory acquisition of vacant ground or for items other than unexhausted improvements in land. In 1966 the Rural (Farmlands Acquisition and Regrant) Act permitted the Government to pass the title to farm land from the titleholder to the developer. Then there followed the Arusha Declaration as a result of which more legislative measures were to be taken. In 1968, the Urban Leaseholds (Acquisition Regrant) extended the principle to allow the expropriation of landlords in urban areas in favour of their tenants who could show ability to develop the land by way of constructing a building thereon as a condition precedent. In the same year, the Customary Leasehold (Enfranchisement) Act was passed. Under it a tenant does not have to establish that he has personally or otherwise developed the land before he is enfranchised. Enfranchisement becomes automatic on the establishment of a landlord and tenant relationship. At the same time, another Act was passed giving the Government power to revoke the land title of an absentee landlord without being liable to pay compensation. In 1970, the Rent Tax Act was enacted introducing a five per cent rent tax on all urban buildings let for commercial purposes. Lastly, in 1971 Parliament passed the Acquisition of Buildings Act which allows the Government to acquire any building worth 100,000 shillings or over which

is let in whole or in part.¹⁴⁹ There are thus so many Acts of Parliament relating to urban land and property in Tanzania that it is almost impossible to analyse the provisions of the purely planning law without any of them being affected in one aspect or other by provisions of these other laws. Commenting on the Tanzanian post-independence reforms, James states,

"Tanzania's post-independence land reform achievements have therefore been the implementation of the principles that land belongs to society not to individuals, good land husbandry requirements must take priority over the 'use and misuse' right inherent in common law property concept."¹⁵⁰

UGANDA:

The Town and Country Planning Act governs urban and rural land use planning in Uganda. The Act established a national Planning Board which is responsible for the formulation of general policies for Town planning. The Board's powers are subject to general and particular directions which the Minister may give from time to time. Section 6 (2) of the Act provides,

"If, in respect of any area, being, or being within a Municipality or town, the Board, upon representations made by or after consultation with the local authority concerned, is of the opinion that an outline scheme should be made in respect of such area and makes recommendations to that effect to the Minister, submitting therewith a plan of the area, the Minister may, by statutory order declare such area to be a planning area."¹⁵¹

Thus, the Board is empowered to make representations to the Minister as to what areas in the country should be declared planning areas. When the Minister accepts the recommendation and makes the declaration the planning area is gazetted. At present, all the towns in Uganda and in the other

two East African countries have been so declared by statutory instruments published by the relevant Ministers in the Gazettes.¹⁵² It is also the function of the Board to ensure that outline planning schemes are prepared for the various planning areas. The duty to formulate the outline planning schemes is vested in local planning committees created under the Act. It is also the committees which make detailed plans of their area. All the plans must conform to the outline scheme as approved by the Board and be in accordance with the general directions of the Board as approved or modified by the Minister of Regional Administrations. In the formulation and preparation of the plans, whether outline or detailed, the Minister, the Board or the local planning committees, as the case may be, are each advised by professional experts of the Town Planning Department. All the four bodies - the Committees, the Department, the Board and the Minister - are to be guided by urban planning policies incorporated in the National Development Plan.

The analysis of the present legislation and the planning process indicates that the powers of the planning bodies to initiate and formulate outline and detailed plans are co-equal in the sense that apart from the approval of plans and the making of regulations each of the authorities can proceed to exercise these powers without waiting for the others to take the initiative. The powers of local planning committees are by way of delegation. Section 9 of the Act provides that the Board may delegate to the committee or to any person subject to the approval of the Minister, all or any of its powers and duties except its power to make regulations. The Jinja Outline Scheme of 1960 was prepared by the local planning committee under such sub-delegation. On the other hand, in the period between 1962 and 1963 the Department of Town Planning prepared development plans for the other main urban centres of Uganda.¹⁵³ In the same

period the Town and Country Planning Board met on eight occasions mainly to consider planning policy but also to amend or vary planning schemes that were in force in all the planning areas throughout the country. It also determined five planning appeals brought under section 27 of the Town and Country Planning Act.¹⁵⁴ In 1969, however the planning schemes for the reconstruction of the Kampala central area were prepared by the Department of Town Planning on the initiation of the Minister.¹⁵⁵ After a planning committee has made a detailed plan for its area the plan must be deposited with the Board. The Board may require the local planning committee to improve the plan generally or in some specific respect. Notice of the deposit must be published in the Gazette and in at least one newspaper circulating in Uganda. The notice must indicate the period in which any person may inspect and make representations with regard to any proposed scheme or project in the plan. Section 16 of the Act provides that any person may, within two months of the depositing of the plan, inspect and make representations to the Board. At the end of the two months, the Board must submit the plan together with any such representations and the Board's own comments on the same to the Minister for approval. The Minister may approve with or without modifications. Once the approval is given, the plan takes effect as if enacted by the Town and Country Planning Act except that the Minister may subsequently revoke or modify the approved plan or scheme. In cases where the initiative to prepare a plan is taken by the Board or the Department of Town Planning it may require the local planning committee "to furnish the Board (or the Department with such particulars and information as the Board (or Department) may require with regard to the present and future planning needs of and the probable direction and nature of the development of its area." The Board's plan or scheme prevails over any other law relating to development

such as restriction on the ejection of tenants, road construction, or building operations which "in the opinion of the Board is inconsistent with" the provisions of its plan or scheme or which would tend to hinder the implementation of the plan or scheme.

It may be deduced from this analysis that planning powers in Uganda are not clearly demarcated. Since it is possible for any of the planning authorities to take the initiative in the preparation of plans and schemes in practice whether such plans or schemes are produced will depend on which of the various authorities is more active. At a recent planning seminar it was pointed out that because both the Department and the Board are responsible for the urban planning of the whole country they often fail to consider plans for all the planning areas especially the smaller planning areas outside Kampala. Meanwhile the local planning committees with lack of manpower and financial resources wait for the two bodies to take the first steps resulting in an impasse in the planning process. It is therefore suggested that the division of urban planning responsibilities should be more clearly defined. One way of doing this is to amend the existing legislation so that in future, the Board and the Minister confine themselves to the making of regulations and the approval of plans while the Department of Town Planning should be responsible for preparing the outline schemes and the local planning committees being responsible for the production of detailed plans and schemes. In the formulation of urban policies and the preparation of the outline and detailed schemes each of the four planning bodies should be represented, at any rate, in an advisory capacity. However, it is proposed that greater responsibility will continue to be had by the Department of Town Planning because of its technical competence and staff.¹⁵⁶

PART B: . PUBLIC PARTICIPATION IN URBAN PLANNING

Until recently, the planning legislation in East Africa did not provide for any consultations to be had with members of the public before any planning scheme could be prepared and approved by the Minister.¹⁵⁷ The only occasion members of the general public came to be involved in the planning process was when the plan or scheme was published and they were called upon to disclose their rights and interests in the land affected or the rights of some other individuals they knew personally to be interested in the land. Any wilful falsification of the required information was an offence punishable by fine or imprisonment.

It is debatable whether in the circumstances of East Africa landowners and residents within an area to be affected by a planning scheme should be consulted. There are two schools of thought on the subject of public participation in the planning process. Some people argue that consultation with interested parties should be a condition precedent to the making of any land use plan or scheme.¹⁵⁸ It is said that lack of consultation is undemocratic and has in the past led to results not contemplated or desired by the general body of the residents. For example, although racial segregation of urban zones was never an official policy during the colonial period especially in Uganda and Tanzania, records of planning meetings show quite clearly that in practice the planners often emphasized segregation as one of the main reasons for their planning objectives. There were no prior public consultations with the residents and therefore it cannot be suggested that in all cases the residents welcomed segregation. In the early days of the growth of Kampala proprietors in the European residential areas began selling plots to Asians, and European residents were prepared and willing to accept the Asians as

neighbours. The planners thought otherwise:

"The secretary brought to the notice of the Board that European plots, leasehold and freehold had been recently transferred to Asiatics in the Nakasero Bazaar. The Board considered this practice was contrary to the principle of racial segregation, and the secretary was instructed to draw attention of His Excellency, the Governor, to the matter, quoting specific instances."¹⁵⁹

The issue of segregation became so important as a political weapon for the nationalists that the Secretary of State for the Colonies was forced to intervene by sending a memorandum to the effect that His Majesty's Government in the United Kingdom disapproved of racial discrimination and of segregation in the Protectorate of Uganda.¹⁶⁰ It is to be noted that European proprietors in the Nakasero area were selling plots to the Asians without any general objection from the respective communities of the two races and yet the Board took it upon themselves to insist on segregation. Subsequent plans of the Board show a clear adherence to the principle of racial segregation and in spite of the Secretary's directive the Board's practice continued unchecked and was later to form the reason for an adverse comment by the East Africa Royal Commission in 1955.¹⁶¹ The argument is that had the Board had consultations with the residents of Kampala the chances are that they would have been satisfied that the majority of the residents did not wish to see rigid segregation of the races introduced. Sociologists and anthropologists who have studied Kampala since the colonial administration are of the general opinion that the inhabitants did not practise racial discrimination on a large scale; at any rate, as far as commercial and residential zones were concerned. Any official acceptance of racial segregation satisfied a minority of the residents.

In spite of the lack of statutory provisions requiring public

consultation in the planning process it is interesting to note that unlike the colonial local planners, the planning experts invited by the colonial administrations to advise the former often carried out consultations of a sort. The experts who prepared the 1948 Nairobi Master Plan consulted a number of members of the public, 92 names of whom were specifically mentioned. However of those named only 5 were Asians and the rest were Europeans.¹⁶ There were no Africans consulted inspite of the fact that the population of the Municipality at the time was composed in such a way that the ratios of the races were 6.5 African, 3.4 Asians to every European. Introducing his 'recommendations' Report on the Proposed Hospital centre and Medical School at Kampala Rees Phillips stated,

"During my stay in the country, I was afforded every assistance, and under the guidance of the Director of Medical Services, Dr. Henry de Boer, C.M.G. M.C., I toured the hospitals at Mulago, the European Hospital in Kampala, the buildings at Makerere, the Hospital at Masaka and the Rural Treatment Centres at Mpigi and Bwania. I had the benefit of hearing views of, and discussing the proposals with His Excellency, the Governor, the Principal of Makerere, the Dean of the Medical School and the Medical and Administrative staffs at Mulago; and in many meetings with the Director I learned much concerning the limitations of the local materials and the difficulties that might be encountered in carrying out so large a scheme. I also met the Architect of the Kampala Town Planning Scheme and the Town Planning Committee, who outlined for me the proposed developments in the Mulago-Makerere area..... A free interchange of ideas took place."¹⁶³

The names and officials disclosed in the Report as having been consulted can hardly be said to have been truly representative of the people who resided in Kampala at the time. The passage is quoted for the purpose of showing that notwithstanding the absence of the necessary provisions

Phillips considered it expedient and important to carry out certain consultations. The tendency of expatriate planners to consult "interested" parties may be explained on the ground that in the United Kingdom consultation was normal practice. On the other hand, the character of the people to be consulted was determined by political considerations. These were the people who had the power to decide the fate of the proposed plans or schemes and it was essential to consult them first if the proposals were to be accepted and implemented.

After independence, the East African governments continued to rely on expatriate planners. The latter did allow a measure of consultation in their planning deliberations and like their predecessors they confined such consultations to people who would later have an influence on their recommendations when they came to be adopted or implemented. For example the United Nations Teams consulted Ministers, civil servants and political party officials when discussing their various urban planning schemes for East African towns.¹⁶⁴

Immediately after independence, the East African governments declared a new general policy of persuading more Africans to become permanent residents in urban centres with greater interest in the administration and development of the towns. The policy was to be achieved by renting commercial and residential plots hitherto reserved for other races. The policy would be implemented by selling or letting those plots to the Africans at low premiums while increasing the premiums and urban taxes paid by Asians and other non-indigenous East African residents. There were two types of African who took up these cheap leases in the towns. Firstly, there were wealthy Africans who had homes or business premises of their own either on the outskirts of the towns or in the counties

bordering the towns and who did not wish to establish new homes or businesses in the towns. They accepted the leases, not to develop them personally but to sublet to non-African communities. The latter paid large sums of money for the subleases while the new African tenants avoided forfeiture of the leases by retaining reversionary interests. Secondly, there were the civil servants who wanted to invest in the land by constructing houses to let to Asians and non-Africans who could afford the exorbitant rents demanded. The civil servants had no intention of residing in the newly built houses themselves since, as we noted, it is the government's policy to house all employees of this category. It is therefore submitted that had the planning authorities carried out investigations and consulted residents it is likely that they would have discovered that most of the prospective grantees of urban leases would have been persons without the inclination to settle in the urban areas. They might have also discovered that the majority of the applicants for the plots possessed land of their own or business interests outside the urban areas and only wished to obtain capital for the development and expansion of their lands and businesses, respectively. Further, such consultations might have led to the necessity of making prohibitive provisions as to the sub-letting of the urban land without the consent of the controlling authorities.

A comparative study of what occurs in other countries may be of interest to the planners in East Africa. In the Soviet Union local planning committees are obliged to invite local residents to participate in the formulation of development plans.¹⁶⁵ In both the United Kingdom and the United States of America provisions are made for adequate publicity and consultation about proposed schemes of urban development before they are finally approved.¹⁶⁶ Moreover, in the developed countries, especially those in the West, there is sufficient Press coverage of the proceedings

of planning committees and inquiries. The coverage is often preceded by publication of proposals, public debates, discussions and protests.¹⁶⁷

The merits and disadvantages of the planning schemes are fully discussed in public. Parliament or Congress and local councils may be lobbied by powerful organisations representing interested sections of the community concerned.¹⁶⁸ Describing the objects of the latest English Act on the subject of planning, Foulkes writes,

"Under Part II of the 1971 Act local planning authorities must prepare for submission to the Minister a structure plan for the area. This formulates the authority's policy and general proposals for the development and other use of land in the area. When preparing the plan the authority must ensure that adequate publicity is given to the matters they propose to include in the plan, that persons who may be expected to want to make representations on those matters are made aware of the opportunity to do so, and that they are given adequate opportunity for making such representations."¹⁶⁹

Specific plans of planning areas are similarly treated and given sufficient publicity as well as being exposed to public debate and discussion. It is worth noting that notwithstanding the consultations and inquiries had locally during the process of proposing a plan, the Minister in England may, instead of approving the plan, order further consultations and inquiries to be held. For instance, when the Greater London Council's Development Plan was submitted to the Minister for approval he ordered an inquiry and in so doing said,

"Since the plan is comprehensive, complex and controversial, since a high level of concern has been expressed about the motor ways proposals and since 20,000 objections have been received, I feel that the plan be subjected to the most searching scrutiny."¹⁷⁰

The inquiry which resulted has been described as the most expensive ever held in the field of urban planning processes by Hagman.¹⁷¹ The same learned author has described the type of representation expected under English planning law. A representation is said to be an expression of views of what the plan to be offered to the Minister for approval should be. In reference to the Greater London Council's Development Plan, Hagman noted that the Planning Committee of the Council had statutory consultations with the London boroughs and other authorities adjacent to the Greater London area and that the original proposals of the Committee were often changed as a result of these consultations. Consultation may be justified on the ground that it avoids wastage of public funds. This may be exemplified by the decision of the Kampala City Council in 1969 to tarmac and construct individual vendors' cubicles in the Wandegaya market. This was a scheme which did not get any publicity and which was implemented without consulting the market users. The Council decided to charge 50 shillings per month for every new cubicle to be hired by the vendors of market produce. The market vendors protested that the price was too high and decided to continue selling their products outside the market building. The Council was subsequently forced to rent the cubicles at a nominal fee thereby losing much of the revenue it had expected from the development.¹⁷² The usual reason for advocating public participation in planning is that the planning process is designed to benefit the community at large and it is only logical that the public who know what their needs and problems are should be entitled to present their views on these matters.

There is also the opposite view that consultation and public participation are unnecessary in the planning process. There are equally strong reasons for this view. In 1968 a committee was appointed in England to report on the best methods "of securing the participation of the public at the formulation stage in the making of development plans for their

areas."¹⁷³ Among the possible disadvantages reported by the committee was, inter alia, the worsening of delays through the injection of public involvement in the intricate process of preparing a development plan and thus nullifying the government's expressed intention to speed up the planning process. Another disadvantage may be the degeneration of a public inquiry from planning principles to party politics. It has been observed that when the Greater London Council Development Plan was being considered a number of amendments were submitted by the Councillors. At the time, the majority and controlling body of members belonged to the Conservative party while Labour councillors were in opposition. Amendments submitted by Labour members of the Council were often defeated by the same number of votes as the Conservative majority on the Council. The same number of votes approved those amendments proposed by Conservative members on the Council.¹⁷⁴ Yet, it cannot be imagined that all the Conservative members' amendments improved the Plan while the Labour members' amendments worsened it. Sometimes the political point at issue may be trivial. For instance, in 1968 the Jinja Town Council decided to beautify its road signs and street posters by painting them green. This action was taken after the Council had apparently consulted residents in the town. As it happened the government objected to the display of green because it was the same colour as the opposition party's flag.¹⁷⁵ The Minister of Regional Administrations directed the Council workmen to repaint the signs in another colour and this was done at considerable public expense. An opposition spokesman was heard to say whether it was the intention of the government to direct that all the grass, plants and flowers in Uganda should be repainted by God in a different colour since in His wisdom he had seen it fit to create all leaves green! It may be concluded from this dispute that it would have been cheaper if, instead of consulting the residents the Council had

simply sought the approval of the Minister. Unfortunately, this was one of those functions of a local authority which did not require the approval of the Minister.

It may also be argued that in a developing region like East Africa where the majority of the inhabitants are ignorant of and perhaps indifferent to planning, time and money should not be spent on seeking their views. However, the argument is fallacious for even in the developed countries, the majority of the inhabitants tend to be indifferent to what government or local authorities are doing. It is only the enlightened, the pressure groups and the individuals intimately affected by a specific plan who proceed to make representations. In this respect the Coventry Structure Plan inquiry of 1973 may be given as a good example of the apathy on the part of the public in developed countries. Although the inquiry was adequately publicised beforehand, only a few ordinary residents within the planning area bothered to attend any one of its many sessions. The proceedings tended to be dominated by the officials of the corporation and the few citizens who appeared or were represented tended to be those who had special interests in the planning process as lecturers, community services officials and big corporations and firms which could afford the time and expense of hiring planning experts and lawyers.¹⁷⁶ In addition, the chairman of the inquiry proceedings made the procedure so formal and legalistic that he would often rule out of order those less sophisticated members of society who dared to appear at the proceedings. A structure plan is a written statement of probable policy and general proposals in respect of the development and other use of the physical environment and the management of traffic "stating the relationship of those proposals to general proposals for the development and other use of land in neighbouring

areas which may be expected to affect that area and containing such other matters as may be prescribed or as the Minister may in any particular case direct."¹⁷⁷ Moreover, in approving a Structure Plan, the Minister has a fairly free hand. He may take into account any matters which he thinks relevant whether or not these were taken into account in the preparation of the plan as submitted to him.¹⁷⁸ After consideration he may reject the plan or approve it in whole or in part and with or without modifications or reservations. If he rejects it outright, he may do so without further ado and without considering any objections which have been made to it. It is only when he decides not to reject it that he must consider the objections and afford any person whose objections have not been withdrawn an opportunity to be heard. Where he orders a local inquiry or other hearing, the local authority and such other persons as he thinks fit are also given an opportunity to be heard.

It follows that because of its characteristic generality and indefinite future development proposals as well as the very wide discretion exerciseable by the Minister, a structure plan does not excite much comment or attract great attention from the general public apart from those sections of the community which have been mentioned above. The expression 'structure plan' is not defined in the Act and directing his mind to this point in Parliament the then Minister of Housing and Local Government stated that the phrase was a misnomer because it is not a plan in the way that people think of a plan, namely, a map. It is a written statement. He later explained that the decision not to define it precisely was deliberate so as to avoid the situation where the Minister and his staff would get involved again in detailed examination of the plan and also to reduce the problem of planning blight. He continued,

"It will not be until one gets down to actual detailed planning that one will be able to have any confidence in any boundaries that might have been drawn in the structure plan. If we sought to draw boundaries in the structure plan, it is almost certain that they would have to be amended at later stages..... and that the people who had thought that they were caught, as it were, might find that they had escaped, and the people who thought that they would escape might find that they were brought within the area of development It would mean that people would start raising objection to structure plans not on the basis of the general nature of the proposals and their rightness, their wisdom and their practicality, but would be putting forward objections on the basis of individual property interests."179

Nevertheless the importance of a structure plan cannot be overemphasized because it is from such a plan that the whole styling of future development control will stem.

The plans that attract greater attention and comment are those known as local plans. A local plan is a plan prepared by a local planning authority on the basis of an overriding structure plan.¹⁸⁰ Greater interest is shown in a local plan because its schemes are definite and its boundaries precise. The properties it affects can be easily identified and the owners and users thereof have a fair idea of what will happen to them and their rights. It is therefore from the local plan rather than from the structure plan that the private individual will be able to learn what the local planning authority's planning proposals for the future mean to him and his property. For these reasons a local plan is mainly a map accompanied by a statement just as a structure plan is mainly a written statement which may be accompanied by a map and illustrations for the purposes of identification and clarifications. The local planning authority must ensure that adequate publicity is given to any relevant parts of the survey and to the matters to be included in the local plan. In addition,

they must consider what persons or groups are likely to want to make representations with regard to the draft plan and to ensure that they are made aware of their right to do so.¹⁸¹ A copy of the plan must be sent to the Minister together with a statement of the steps which have been taken to give publicity to the plan and to avail interested persons of the right to make representations. Copies of the plan must be made available for public inspection, indicating the time within which objections may be made to the local planning authority. Generally, the local planning authority will have a discretion whether or not to hold an inquiry but where the Minister so directs they are obliged to do so. But even in cases of local plans it will be mostly people whose property or interests are affected who will make representations and appear at the inquiry proceedings, if any.¹⁸²

From the planners' viewpoint public participation wastes time and contributes very little to the planning scheme. As far as legally possible the planners in charge of planning proposals will try to avoid formal meetings with objectors at large. Hart has described how objectors are dealt with in Glasgow. It has been the practice there to arrange meetings with principal objectors, which have led to the withdrawal of some objections as a result of minor plan modifications or more defined arrangements for relocation. Even if objections have not been withdrawn some have been converted to largely nominal objections while, in other cases, the corporation has been given a clear insight into the nature of the objections and has been placed in a better position to explain their own proposals at the public inquiry and to undermine the case of objectors. Objectors are encouraged to call at the Town Clerk's Office where fuller and informal explanation of the plan details is given to them. It has been felt in Glasgow that the need for massive development is so urgent that time cannot

be wasted in what in the end might be fruitless consultations and in giving extensive publicity which might only encourage greater objections, either to redevelopment of any kind or to the type of development proposed. The interest the Glasgow Corporation shows in publicity for its planning schemes can be illustrated by the fact that on average it spends some £200 to £300 on shop window displays of the schemes whose capital costs are in the range of £10,000,000 to £50,000,000.¹⁸³

There is a conflict in the attitude of the planners and of objectors to the purpose of publicity and representations about a scheme. The former tend to think that the purpose is to 'sell' their scheme to the public and publicity and meetings with objectors are designed for public relations. On the other hand, objectors believe that these are designed for the discovery of defects in the schemes and meetings and consultations are designed to enable them to present their own alternative proposals which may or may not be accepted and adopted in the schemes. Admittedly, public inquiries can be lengthy exercises and as Hart observes, in Glasgow they are conducted by Reporters, and Senior Counsel at all major inquiries.¹⁸⁴ This contrasts with the English practice of appointing inspectors from the then Ministry of Housing and Local Government - now the Department of the Environment - to conduct planning inquiries. In both systems the objectors and the local planning authority are permitted to put forward a wide range of evidence and there are full opportunities for examination and cross-examination.¹⁸⁵ These are supplemented by opening and, where desired, closing statements by all the parties. Word-for-word records of the inquiry are carefully made and transmitted to the Minister along with the report of the presiding official. Thus, the planning procedure involving public participating may be described as the adversary system of litigation conducted in a court of law. The judicialisation of the planning process has been criticised in the following words,

"A public inquiry is a rotten instrument for arguing about planning policies. Policies cannot be proved right or wrong through the proceedings of learned counsel, and the examination of opposing witnesses... the effect is to place the (planning authority) on the defensive, to concentrate attention upon objections rather than on constructive improvements."186

It is no wonder therefore that traditional planners should regard public participation in the planning process as a hindrance to good and effective formulation of schemes and a device to delay implementation of redevelopment and development projects. It is the usual practice for the local planning authority to be represented by some of the greatest lawyers in the land to argue their case against objectors before an inspector in England or Reporter or Q.C. in the case of Scotland. Commenting on this aspect of public participation in respect of the Greater London Development Plan Inquiry, Hagman observed,

"The GLC's superior knowledge, demonstrated through Boydell's questioning, can reduce almost any witness to stammering - particularly when asked for suggestions..... A witness is vulnerable to questions which inquire whether he has fully considered how his proposed change will affect other matters in a plan that the GLC offers as comprehensive, thoughtful and integrated. No witness can claim to have thought out all the consequences of a particular change or to have conducted significant studies to justify it."

The dilemma faced by a witness or objector appearing at a planning inquiry may be illustrated by the cross-examination conducted by the GLC's counsel against the director of the Town and Country Planning Association, one of the most powerful voluntary associations in England:

"Question: What is the figure you are asking to be inserted
 in Table 1?

Answer: I think this is for the GLC, or perhaps the Minister..... We have not calculated.

Question: Are you not going to assist the panel by suggesting what you say the figure should be?..... You are not giving the Panel much material, are you?.....

Answer: I think we can offer to assist the Panel....
(Proceedings adjourned for the next day, to enable witness to do research on the question).
The next day he produces his answer.

Answer: I would like to correct what I said yesterday in offering to produce these figures. I have considered more carefully - and frankly I do not think we as an Association have the resources to do it."187

On the other hand, the planning authority has adequate funds to engage some of the greatest experts in the field of planning. For instance, in Glasgow, the Anderston planning scheme inquiry produced greater use of expert witnesses since the local planning authority felt that its own planners lacked experience to make a convincing case for the industrial and commercial aspects of its planning scheme. No less than five additional expert witnesses were brought in to assist. They included Thomas Dulake of Gerald Eve and Sons, a London firm of chartered surveyors; noted for their experience in property development, Sir Herbert Manzoni, City Engineer of Birmingham Corporation, Peter Self and Alan Day of the London School of Economics and Wyndham Thomas of the Town and Country Planning Association. 188

The majority of the people who permanently reside and who claim the enjoyment of the amenities provided in the East African towns have been the members of the elite. These have included the majority of the immigrant races, senior civil servants and employees of institutions like hospitals, universities and industrial and commercial firms and companies. Moreover, it is the same type of elite who own and occupy much of the urban land. 189

The circumstances and living conditions of these people are not very

different from those of an average town in any developed country. For this reason it may be argued that if the residents of such a town in the developed country are justified in demanding the right to be consulted about the planning proposals for their area the residents in the East African towns should be justified in claiming the same right. The only difference may be in the nature of the procedures to be adopted. It can be further argued that it is the elite who are able to begin understanding the techniques and objects of planning. Moreover, looked at from the planner's point of view, it is these same people who are likely to advocate opposition to planning schemes and to do so with effective force. It might therefore be in the interests of the planners that the elite be consulted. In reference to the Glasgow planning practice it may be noted that the local planning authority initiates interviews with industrialists, the Health Service Executive Council, the Glasgow and District Licensed Trade Defence Association, the Ministry of Public Building and Works, the Scottish Bus Group and the Railway Board. Although the primary purpose of such interviews is to establish possible land requirements there is also the possibility of anticipating objections likely to be raised by these important bodies and organisations.¹⁹⁰

The conclusions gathered from the reports of the United Nations Teams which visited and made tentative planning proposals for East Africa show that many residents were very keen to discuss the details of the various schemes proposed by those teams. Moreover, one of the teams reported that its members had benefitted from the consultations it had with the residents and, its leader reported,

"A series of weekly seminars were held - one for the local government staff and one for the councillors. Problems of urban problems had from the early days of the Mission received systematic treatment and

mutual discussion within the seminars..... some of the participants offered to participate in the joint development of their land in accord with the plans that the team might produce."191

Again it needs to be emphasized that the participants were not only common residents but members of the elite group. Indeed, since the latter half of the 1960s the East African governments have recognised the need to involve the general public in planning and development discussions. But an analysis of the recognition as incorporated in the National Development Plans and planning practices show that the 'public' is nothing more than selected individuals of the elite. Further, interpretation of what constitutes public participation differs from country to country. For instance, under the heading 'People's Participation' in planning and development the Kenya Plan states,

"It must be recognised that the above measures, though significant, can achieve little by themselves unless the people fully participate in the development process.... Efforts will be made to ensure that the new plan is thoroughly understood, by the publication of a popular version of the Plan and a country - wide campaign to publicise and explain at all levels the meaning, content and requirements of the Plan. The campaign will be channelled through the radio and television, adult education classes, seminars, pamphlets, etc. A programme for this purpose is already under-way."192

Thus, nowhere is it said that comments from the public will be sought or that citizens will be invited to make representations on the plan. In effect, public participation is tantamount to the right to be informed about what is proposed. It is an educational exercise and no exchange

of views between the planners and residents seems to have

been contemplated. In Uganda, public participation means that planning bodies will include on their membership officials of both the government and local authorities as well as councillors and nominated persons. In Tanzania the position is the same as in Uganda except that there planning and development has become more politicised in the sense that additionally the membership will include regional and local officials of the only political party in the country.¹⁹³

Before any criticism can be made of the elitist type of 'public' participation in the planning process it must be conceded that the ordinary people, even if given the opportunity, may contribute nothing or very little to the process. In this connection it may be useful to refer to Ouma Oyugi's studies in "Participation in Development Planning at the Local Level" which were published in 1973. Oyugi begins by stating that people's participation in planning at the local level is one of those many catch phrases that have found their way into the vocabulary of development planning and are increasingly dominating it. He then proceeds to illustrate its weakness in the context of Kenya - a weakness that can be applied to the rest of East Africa. He supports his arguments by using the self-help movements:

- "1 In Suna Location. (a) Patient's ward completed. Does not function because there are no staff and no medicine. It was started in the hope that the County Council would eventually take it over and incorporate it in its Health Centre. At the time, the Council was financially weak and unable to support its own buildings.
- (b) A primary school started but later abandoned in preference to a dip whose cattle - supply is in grave doubt since it is located within a 'cattle rustling corridor where keeping cattle has become a serious gamble with life.
- 2 In Kanyam Kago Location: Two huge secondary schools only 2 miles apart, built. One has no pupils. The other only 27 pupils. There is

no money left to construct teachers' houses and pupils will not come without teachers. The 27 pupils come mainly from the bordering areas of Tanzania. (School supposed to help Kenya children.)

3. In Maheru Kada: A health centre, good and well constructed. Nothing going on (at present). The people cannot equip or staff it. Now waiting for the central Government to take it over."194

From these case - studies Ouma Oyugi concludes that these self-help projects have been wasteful of local funds. They have also placed demands upon government funds the expenditure of which was not contemplated and the projects were not always consistent with national planning priorities. In accepting Ouma Oyugi's factual criticism it must be said that the efforts and labour of these communities deserve commendation. Further, it is not unreasonable to criticise the public authorities, both central and local. Had they matched the enthusiasm of the local people with expert advice it is possible that the said efforts and labours as well as their savings would have been spent on feasible and practical projects. To have let them continue with the completion of the schemes knowing that in the end it would be a futile exercise was, to say the least, administrative negligence. These experiences have left the people who participated with disappointment and disillusionment. However, the blame must rest on the shoulders of those who knew better, namely, the elite of the respective communities.

The deduction to be drawn from this account is that public participation in East Africa must be preceded by education and information and then be guided and directed. It is submitted that consultation could be had at public meetings which in East Africa are called barazas. They have already been mentioned in connection with the powers of compulsory acquisition of land. The principle proposed here is that every time a local planning authority decides to initiate a detailed plan for its area it should organise

local barazas and then declare the general principles of its plan and schemes. It should then invite comments from the people attending the baraza. It is the practice in East Africa for government ministers and officials to explain their policies to public barazas and these barazas usually attract large crowds of people. It is reasonable to assume that an even greater number of people would attend if they knew that it was the planning and development of their town which was the subject of discussion at the baraza. There is no doubt that residents whose homes, land and jobs are likely to be affected by a planning scheme would wish to be present at the baraza and to make representations. It is further proposed that after the planning authority has considered the views expressed at the baraza it should formulate a draft plan and submit it to other interested parties such as bodies representing school teachers, university lecturers, businessmen, hospital workers, industrialists, and trade unionists and associations for their own comments. The barazas and these parties might be directed to complete deliberation on the plan within a specified period of three to six months. Thereafter, the planning authority would be obliged to review the draft plan in order to accommodate any opinions so far expressed on the plan and then would deposit the plan with the central planning authorities for further consideration and approval. It is also recommended that the present procedural rules should be amended so as to include a provision that will give the Minister power as to whether or not to order a public inquiry into the plan or scheme as submitted to him for approval. The holding of an inquiry might be necessitated by subsequent opinions and representations made in respect of the draft plan. For this reason it will be necessary for any objections, views and representations on the plan or scheme presented at the barazas and the meetings of the various interested parties to be recorded and submitted to the Minister.

In the event of the Minister ordering a public inquiry, another baraza, preferably to be attended by representatives of the groups who might have considered the plan or scheme individually, should be called and publicised. It is assumed that at this second baraza there will be exchange of views and information between the planners and the interested parties on such matters as the Minister may have directed to be discussed, reasons why objections were not acted upon in the final plan and any new conditions that may have arisen since the draft plan was last examined. At this latter baraza notice should be taken of the great influence which chiefs exert on the general public when assisting public officials to 'sell' government plans to residents. It is the chiefs who often lead the discussions and invariably select speakers to address the baraza. This is because the baraza was originally designed to assist the government in the maintenance of law and order and in the collection of taxes with the chief as the boss, the executive and enforcement officer. He knew who were 'bad' and 'good' boys and who were trouble makers; his main concern was to project what was going to be done rather than what should be done. For this reason it has been argued that the baraza may not be the best venue for the propagation and discussion of planning and development ideas. This argument is more relevant to the baraza following the Minister's direction to hold a public inquiry than the one preceding the draft plan since the latter will have been called specifically to seek views from the audience. At the second baraza planners will have finalised their own views as expressed in the final plan and may feel that the Minister's order for another inquiry was unnecessary. They may therefore persuade the chiefs to play their traditional role of suppressing controversial opinions against the plan and to encourage people who agree with the planners to speak at the baraza. Consequently, the person to preside at

the second baraza should be someone who is independent of both the chiefs and the planners. It is suggested that the District commissioner of the area would be a proper person to undertake this responsibility.

Furthermore, the second baraza will be concerned with concrete planning proposals and defined development schemes involving, in some cases, technical issues. Therefore it should be permissible for the residents and other interested groups to be represented. Since there are shortages of expert planners and legal representatives, the kind of representation we advocate need not be based on these professions. In the United States of America there is a form of representation known as advocacy planning. It is acknowledged that public participation may not be very effective if citizens do not have knowledge or technical assistance so that they can know what the alternatives are and how to obtain results. If they were to have technically and politically knowledgeable people working for them, they could better participate in the planning process. Advocacy in planning has been defined as "advocates of interests of groups, organisations or individuals who are concerned with proposing policies for the future development of the community."¹⁹⁵ The idea is that just as powerful economic interests have their advocates and lobbyists, the poor and the less sophisticated must have such help if they are to participate effectively. It also means that instead of simply opposing whatever plan or scheme is proposed, their 'advocates' would be able to formulate alternative proposals to be submitted to the planning authorities. In the United States of America advocates in planning and development range from planners employed by government agencies representing the poor either part-time or full-time to experts hired by the people concerned and independent of government agencies. In almost all cases the 'advocates' are specialists in one or more aspects of the planning process and invariably they are paid for the services they render to the communities. Experts and finance are in short supply in East Africa and the employment of independent

experts may be extremely limited. It is suggested therefore that the general public within planning areas in East Africa could be represented differently. In the case of the city and the larger towns the community could be represented by one or several planners and one lawyer in private practice. These would be paid with moneys obtained from public funds. Any other interested groups or associations may decide whether to be represented by such experts or other spokesmen who may not be similarly qualified. In either case, these groups or associations would have to meet the costs of such representation. They would be composed mainly of members of the elite who are expected to be wealthier than the ordinary residents and therefore are more capable of contributing to the cost of planning. The smaller towns and urban centres could have university students representing them. Currently, the professional law schools in East Africa have or are in the process of establishing law-surgeries for their students where the ordinary people will be able to get free or virtually free advice and it is proposed that these surgeries could be extended to cover student - representation in the planning process.

SECTION IV: THE EVOLUTION OF THE LAND USE PLAN

PART A: OBJECTIVES OF A LAND USE PLAN

A land use plan lays down a scheme of how a given planning area shall be developed in the future and what type of activities may be carried on in defined zones as identified on the plan. All modern states find it necessary to subject certain activities to some form of control. There are a number of reasons why this is so. Sometimes control is imposed to restrict a particular activity in the public interest and the interest may be based on economic, health or security reasons or simply for environmental reasons. Sometimes it is introduced for the protection of local amenities, buildings and places of historical or architectural interest or of the countryside generally. At times control may be desirable to keep the operation of the activity in conformity with national or international standards and values. Sometimes it is intended to create an economic climate under which the more capable members of society may not exploit the ignorance or poverty of the less capable members. Occasionally, control is imposed simply to raise public revenue. Invariably, such control is effected through three well established methods, namely, registration, licensing, and inspection. Persons who wish to engage in prescribed and controlled activities are required to fulfil and operate under certain conditions. Failure to observe the conditions may lead to the imposition of penalties. Within an urban administration it is the land use plan and its specific schemes, which predetermine these matters. Whether one wishes to build a factory, construct a block of flats, open up a commercial or trading centre or erect a school, one must examine the details of the existing land use plan in force. It will be from these details that he will discover what areas are permitted for his choice of activity and what conditions he needs to fulfil before the commencement or operational phase of the

particular activity.

To appreciate the objectives in the preparation of a land use plan it may be useful to examine an actual plan. For this purpose the objects of the Dar es salaam Master Plan prepared by a Canadian team for the Tanzanian government may be discussed.¹⁹⁶ The team stated the planning goals and objectives of the plan as follows:

- "To eliminate, through allocation of land uses and traffic systems serving those uses through the provision of separate surfaces for pedestrians and cyclists where necessary, the conflict of pedestrian, bicycle and automobile movements at critical points in the city, particularly in the downtown shopping area where parking, servicing and through traffic movements conflict with the shopping activity.
- In new planning proposals for residential and commercial areas, to provide strong pedestrian movement systems as a structuring force to those communities and business areas and to combine these pathways with open space, recreational and educational uses to become a meaningful part of the activity structure.
- The relationship of new residential communities to industrial development should allow for minimum walking distances for workers.
- Micro environmental areas of residential uses to be grouped to provide spaces for children to play off the street in spacious areas, and to afford social contact. This is possible within present space standards without decreasing densities.
- Space for traditional shambas to be provided for recognizing the need for security also. These shambas could occupy areas intended for future higher density housing, which is not feasible presently, and on land reserves for major road systems required in the future.
- The traditional tea shops, fruit shops, etc. which are attracted in an uncontrolled way into industrial areas, as is seen in the Changombe Industrial Area, should be guided and consolidated into environmentally safe areas and still convenient to workers and combined where possible with worker recreational areas.
- To respect, to guide and to strengthen the activity pattern of traditional African housing areas such as Kariakoo. The system of corner "dukas" and social club structure is to be retained and planned for."¹⁹⁷

As can be seen the team does not merely state the objectives of the Master Plan in general terms but goes further by indicating how the objectives will be realised and by showing results likely to be obtained. The team proceeds to treat other goals of the plan in a similar manner. The latter include economic base and growth factors, servicing aspects, transportation and employment aspects, natural and physical factors, social and cultural conditions, visual aspects, regional setting, shopping activity, residential area activity, recreational and leisure time activity, traditional rural dwellings in urban uncontrolled settlements and immigration to the urban way of life. It is important that if a physical plan is to be feasible attention must be paid to overall policies and objectives determined politically at the national level. It would appear that the Canadian team prepared the plan in accordance with the fact-situation as they found it in Dar es salaam without a conscientious effort to relate it to the national urban plan. This view is supported by a number of factors. In the first place, of all the documents and statements which form the background to the plan none relates to the national plan specifically. In the second place the team was of the opinion that proposed urban development expansion should be in areas of best overall services, communications, climatic orientation and utilization of natural resources. This may be contrasted with the national urban policies of the Tanzanian Government described below.

The Tanzanian National Development Plan described the policy of urban land use planning as intended, firstly, to enable urban development to act as a stimulus and complement to rural development; secondly, to avoid the unacceptable social conditions of urban life; and thirdly, to ensure that cities are not to become an increasing drain on the country's financial and physical resources at the expense of rural development and other public works and services. The Plan then proceeded to set out

the objectives of urban physical planning in the following terms:

- "(a) Restraining the overall rate of urban population expansion.
- (b) Distribution of that growth amongst the various urban centres, so as to avoid excessive congestion in one city and so as to disperse total urban population amongst a number of towns to maximize the development impact on rural areas.
- (c) Maintenance of a general level of well-being in the towns consistent with the requirements of an equitable urban-rural balance and satisfactory work performance by the urban community.
- (d) Minimizing of the capital and foreign exchange costs of pursuing the other objectives."¹⁹⁸

The conceptions included in the Dar es salaam Master Plan and its objectives as determined by the Canadian team suggest that the results will be the opposite of those envisaged in the National Development Plan.

One important aim in formulating a land use plan must be realism. For example, after the preparation of both the Dar es salaam Master Plan and the Arusha Economic Development Plan it was estimated that the former would cost about 700 million shillings and the latter 10 million shillings in providing infrastructures alone.¹⁹⁹ Thus, the Kenya National Development Plan which includes objectives in urban planning and development emphasizes the point of realism:

"The objective of planning is not to set down a series of goals promising great wealth for everyone but to make a realistic assessment of the resources available to the country, to choose those parts which will accelerate progress in the directions desired and to proceed as far as possible and as fast as possible towards the goals set down. Thus, although the new Plan sets the country a hard task, it is a task within its capacity to achieve. Indeed, it is vital that it is achieved."²⁰⁰

In countries where the bulk of urban developments depend on contributions from public funds as in East Africa, the planner needs to be constantly aware of the fact that implementation of his plan proposals will largely depend on the vote earmarked for his particular department and that to plan otherwise is unrealistic and may be harmful in some cases. His zeal to see an ambitious scheme financed is matched by the pressing needs of other departments and public institutions. But even where those other bodies have not made any special demands on public funds, the planner may have to reckon with the traditional attitude of the Ministry of Finance towards authorisation of public expenditure. Cohen has given the traditional difference between the Ministry of Finance and the planners. Finance is preoccupied with excessive expenditure and inflation; planning is concerned with economic development. Finance has responsibility for protecting the interests of other Ministries and for special relationships to other matters that planners tend to ignore. Finance has got to be concerned with immediate issues whereas planning may not be so concerned.²⁰¹ Because of these factors the planner may make decisions and then events occur which preclude the possibility of realising the original aspirations of the decisions. Writing about "Planning for Developing Countries" Crooks has made the following observation,

"Another feature common among developing states is that, again frequently, because the existing political system is relatively uncomplicated and unencumbered by complex organisational processes, the planning function can be situated close to the locus of political power. National leaders can exert a tremendous influence on plans and policies and can resolve disputes more easily among units of government because the number of such units is fewer and the hierarchical structure simpler."²⁰²

This means that the planner has to be cautious in his plans. He must be able

to anticipate how the political powers would view his schemes and the chances of coincidence between his own ideas and those who have the power to approve. It must be said that this is a characteristic that is common to all countries whether developed or developing since planners in the developed countries are bound to have regard to political considerations. For example, Hart has observed that in Britain it would be futile to make proposals in a local plan which did not lend themselves to the general approval of decision-makers at both the local and national levels.²⁰³ Indeed, if the concept that planning is comprehensive, multi-disciplinary and concerns itself with economic, social and political issues is to be fully appreciated then it becomes inevitable that the people who exercise the overriding power over these matters must have a greater say. Occasionally, planners in the developing countries may produce plans which are not considered feasible or which no one intends to implement. These are usually plans that are either politically motivated - to show the electorate that something is being done - or which are prepared for no other reason than to qualify for some bilateral aid or loan which will be used to construct some specific project.²⁰⁴

In one important aspect of urban planning we see a distinctive departure from the planning practices of the developed countries. Reference is made to the conflict that often arises regarding a proposed plan. The dilemma is whether the objectives in the detailed plan should be left to the local planners or to the central planning authorities. In the developed countries especially those of the Western World, the principle is to leave local plans to the local planning authorities with the central government merely providing the general policy and control. It is often argued that the concepts of democracy dictate the policy towards decentralisation rather than centralisation. In the United Kingdom, for

example, the Minister and his agents play a small part in the preparation of the local plan than they play in the preparation of the structure plan.²⁰⁵ This is because the former is mainly concerned with local issues and details of land use while the latter is principally a policy document setting guidelines for future development. In the developing countries, on the other hand, the plight of planning and development problems are such that local authorities are in most cases incapable of evolving and appreciating the necessary details demanded of a land use plan. While ideally the interests of planning would be better served if power was vested in the local authority that has the intimate knowledge of local conditions, in practice very few local authorities in the developing countries have the required manpower and financial resources to sustain a separate technical organisation of their own without relying on central government facilities. In these countries the most flexible and workable system should be one under which power is vested in the central authority with wide discretion to delegate whenever more and more local authorities become capable. For the present, the East African countries cannot afford to decentralise planning powers beyond the limits suggested in the previous chapter. The complaint of local authorities that by retaining these powers the central authority interferes in their local affairs without understanding their needs is partly answered by our proposals for representation and consultation. It is envisaged that central planning authorities will continue to provide as many details of the plans as possible and also give all the necessary assistance required in the preparation of local land use plans.

More specifically, the enabling Act will define what is to be done

in the preparation of a land use plan. For example, the Kenya Land Planning Act whose provisions have their counterparts in Tanzania and Uganda defines development as

- "(a) The making of any material change in use or density of any buildings or land or the subdivision of any land.
- (b) The erection of such buildings or work, and the carrying out of building operations, as the Minister, may from time to time determine."²⁰⁶

The provision also lists specific actions which are included or excluded from the general definition. The Town and Country Planning Act provides a wider definition of development to include engineering operations, mining operations or other operations in, on, over or under the land. Since these definitions were adopted from the English planning law whose case law continues to be in force in East Africa in the absence of local precedents it may be necessary to examine the meaning given to the definitions under English law. Section 290 of the Town and Country Planning Act, 1971 which reproduces the definitions from the same statutes adopted in East Africa gives no less than seventy-five expressions which constitute 'development' within the meaning of the definitions.²⁰⁷ However, these expressions are inexhaustive for it was held in Cheshire C.C.V. Woodward (1962)²⁰⁸ that there is no one test to find out what physical characteristics constitute development of land and that "it depends on all the circumstances and on the degree of permanency of the 'building, engineering, mining or other operations'". The expression "building operations" includes rebuilding operations, structural alterations of buildings, structural additions to buildings and other operations normally undertaken by a person carrying on business as a builder. The special definition of "building operation" leads in turn to the special

definition of "building" which includes any structure or erection, and any part of a building, structure or erection, but does not include plant or machinery comprised in a building, structure or erection. In Bucks C.C.V. Callingham, (1952),²⁰⁹ it was held that a model village was a structure or erection but in James v. Brecon C.C., (1963),²¹⁰ it was held that swingboats were not a "building." In Coleshill and District Investment Co. Ltd v. Minister of Housing and Local Government, (1968),²¹¹ it was held that demolition of part of a building may amount to 'development.' In that case the removal of embankments surrounding ammunition magazines was held to be development. Engineering operations include the formation or laying out of means of access to highways and "means of access" includes any means of access whether private or public, for vehicles or for foot passengers and includes a street. "Land" includes buildings, any structures and erections.

With regard to material change in use, change means substantial change, that is the change of use of land which is fundamentally different from the old use. But what is a substantial change is a matter to be determined by the surrounding circumstances of a given case. For instance in Birmingham Corporation v. Minister of Housing and Local Government and Habib Ullah, (1964),²¹² it was held that there had been a material change of use when a house, formerly occupied by a single family was let out in flats to a number of families. In Williams v. Minister of Housing and Local Government, (1967)²¹³ where a building on a nursery garden hitherto used for sales of produce grown on the nursery became used also for sales of produce grown elsewhere, it was held that there had been a material change since the former use was ancillary to the agricultural use of land of which the building had only been a part. From these few cases it becomes apparent why it is necessary to include lawyers on planning boards and

committees.

It is admitted however that while the inclusion of lawyers in the planning process may avoid some of the obvious errors of law commonly made by non-legal planners it will not be a castiron guarantee against any errors that often arise from the intricacies of planning law. Several examples may be given from the East African planning experience. In Premchand Nathu & Co. Ltd v. The Land Officer,²¹⁴ a company which was engaged in development projects in an urban area held crown land under a certificate of occupancy which granted it a term of years for 99 years on condition that the company undertook to erect buildings on the said land of a value not less than 60,000 shillings. The erection was to commence within a period of three months from the time the township authority approved the plans of the buildings. The plans had to be submitted by the company within six months of obtaining the certificate of occupancy. Further, the buildings had to be completed within twenty four months from the grant of permission. In spite of various extensions of time by the town authority the company failed to fulfil all these conditions within the stipulated periods as extended. The authority revoked the right of occupancy without giving the company any notice of its intention to revoke the grant. The company refused to give up possession of the land. The respondents took proceedings for, inter alia, resumption of possession. The High Court held that revocation was validly exercised and this decision was upheld by the Court of Appeal for Eastern Africa. On a further appeal to the Judicial Committee of the Privy Council, the appellants' counsel contended that S.14 (1) of the English Conveyancing and Law of Property Act, 1881 applied to the exercise of any right of revocation and that therefore since no notice had been given in accordance with the section the purported revocation was invalid. The appellants had reasoned that

the Act had been adopted in East Africa without any specific reference to the liability of the crown and the crown was therefore bound to give notice by necessary implication. Their Lordships disagreed. They held that this implication could not be inferred from the received law and they accordingly dismissed the appeal. From the court of first instance to the Privy Council both appellants and respondents had been represented by lawyers. In Hassanali R. Dedhar v. The Special Commissioner of Land,²¹⁵ the Court of Appeal for Eastern Africa thought otherwise. The court had found that the respondent authority in this case had refused to consider specific designs of buildings which the appellant wished to erect on the land on the ground that it had already decided to take steps to evict the appellant for his failure to comply with the conditions. Briggs, J.A., reading the judgment of the court said,

"It is thus clear that the respondent made it impossible for the appellant to carry out his obligation to build, and I think we must in the circumstances assume in favour of the appellant that, had he not been so prevented, he would probably have performed the obligation."

Sometimes the difficulty arises because the planning law has not been reformed to keep pace with political and social changes. In Re An Application by the Bukoba Gymkhana Club,²¹⁶ the local planning authority declined to extend the liquor licence of the club on the ground that the club's membership was exclusive to one race and this was contrary to the post-independence policy of non-discrimination. The High Court had no difficulty in holding that the authority had erred in law in refusing to give a hearing to the club. There was no evidence that the club's constitution of more than thirty years standing had been changed and

considering that the licence had been held during that period without breach of conditions the club was entitled to a hearing. On the substantive law, the respondents argued that the club's constitution was discriminatory in character. It provided that new applicants had to be nominated and seconded by members of the club. Since the founder members of the club had belonged to one race this meant that in practice applicants from other races had little chance of becoming club members. The learned judge was not prepared to impeach the constitution on the ground of discrimination. He expressed the opinion that the rules of the club were not different from those of any other social club whose members sought to limit membership to people with whom they shared common attributes and interests. To hold otherwise would be absurd since similar clubs such as trade unions, mountaineers' associations and women's sewing guilds might be attacked on the ground that they discriminated against non-trade unionists, non-mountaineers and men, respectively. Nonetheless, there was no doubt the Gymkhana club practised discrimination which was disapproved in an independent Tanganyika. It is submitted that the local authority's stand would have been strengthened if the new post-independence political and social attitude towards multi-racialism had been followed by the reform of the colonial laws. The reform might have provided that clubs applying for renewal of liquor licences and whose premises were open to the public had to show in their applications that their memberships included members of other races or that inspite of encouraging other races to join them none had applied for membership.

One of the activities attracting great attention from planners in Kenya is the registration of titles to land. It has been estimated that by 1980 all land in Kenya will have been registered under four categories of titles, namely public, corporation, private and communal

land. Thus the planning process in Kenya to-day affects much of land which is registered and will incessantly continue to do so. However, the law relating to registered land is by no means simple as a recent Practice Note from the Registrar of Land Titles shows.²¹⁷ Section 143 (1) of the Registered Land Act provides, inter alia, that registered titles of land in "a first registration" shall not be questioned in a court of law. The sub-section was originally intended to stave off vexatious litigants and to ensure the finality of a registered title. After independence it was discovered that the provision was being used as an instrument of fraud. In Central Province, especially in areas where land adjudication and consolidation took place during the 1952-1956 state of Emergency in Kenya when a large number of people were in detention, some cases of fraudulent registration occurred. In case of a subsequent registration the court of competent jurisdiction can order a registered proprietor tainted with fraud to transfer the parcel of land to the true owner in equity. If the former was unco-operative the practice was for the court to direct some other person such as the registrar of the court, the District Commissioner or the land registrar to execute a deed of transfer vesting the title in the latter. There were cases in which a court would be satisfied that a first registration had been defective or fraudulently made but because of the sub-section felt itself restrained from making any just order. In 1969 the Registrar of Land Titles noted that his office was receiving many letters regarding this injustice. He therefore issued the following Practice Note:

"Subject to the views of the Attorney-General's Chambers, and the addressees of this note may wish to make, I am prepared to accept for registration court orders in this

respect."

Later, the Registrar sent another circular indicating that the Attorney-General had agreed with his view in the following terms:

"The A.G. quite agrees with what you say in your third paragraph about the jurisdiction of the court to make an order for example-declaring A the registered proprietor holds lands as a trustee for B and ordering A to execute a transfer in favour of B."

Following the Registrar's Practice Notice, the Attorney-General suggested that the process should be taken in two stages, namely:-

- (a) The declaration that A holds the property as a trustee for B including an order in personam to A to transfer the property to B.
- (b) In deficit of A obeying the Court order, a second application to be made to the court so that a person other than A be authorised to execute the transfer for and on behalf of A. 218

Registered Land in Uganda, especially in the former Kingdom districts is rife with similar legal problems. The situation is further complicated by the existence of enacted and customary rules of inheritance which are in force at the same time but often conflict. For example, a registered proprietor may leave a will vesting his land in some heir recognised at law but later someone may turn up claiming to be the heir in customary law and this may lead to protracted and contentious litigation. Thus, one of the objectives of the planner must be to familiarise himself with the conflicting interests of the various groups of people who reside

in the area to be planned. These interests need to be determined at an early stage lest the planner discovers afterwards that all the work he has done has been a waste of time.

It has been said that a plan should not merely incorporate ascertained or probable trends of development but objectives should be set in terms of what kind of city the community wants:

"After the alternative courses of conduct have been presented, debated, and a selection made, the plan represents the decisions and judgments of a community concerning its desirable form and character. In this respect it is a blueprint of values- although once more its evolving nature must be emphasized. The plan can never be a total solution, for it exists overtime, just as it is a statement of values at one moment in time. In providing this value scheme it brings to bear upon debate of current physical development long term considerations founded on basic assumptions. And while predicating goals, the problems that may impede their achievement, as well as the means for circumventing the obstacles, thrust themselves forward for analyses and solution. Hence, its educative force on the planners and the planned is again apparent."219

It can be deduced from this passage that one of the objectives for a land use plan is to provide a background as well as a platform from which the shape and content of an urban centre will be examined, debated and discussed. It follows that flexibility rather than rigidity, openness rather than technicality should be the guidelines.

PART B: THE PLAN

A land use plan consists of two parts. The first part is the text of the plan which defines, describes and delimits the activities that may be carried out in the planning area. These activities are classified under different zones which may be residential commercial, industrial, transportation, open parks, civic centres, recreational or institutional. Then appended to the text will be a map drawn to identify the areas described in the text. The zones are usually coloured differently for the purposes of identification. It must be emphasized that as far as local detailed plans are concerned, it is the map as zoned rather than the text which is the plan. In respect of an outline plan the text may be more important than the accompanying map. This is mainly because a detailed plan emphasizes land uses while the latter concentrates on policy behind such uses. The text in a detailed plan will not only describe the zones but also specify the type of developments which may be erected therein. The text will also prescribe the procedure to be followed by persons desiring to commence any development schemes or projects. It may in addition state the penalties likely to be incurred by defaulters. By way of illustration the Plan of Jinja Municipality of 1960 may be examined. The general text of the plan gives the purpose of its scheme as,

"To control the development of the land comprised in the Planning Area, to secure proper conditions of health and sanitation, communication, amenity and convenience in connection with the laying out and use of land; to preserve existing buildings and other objects of architectural or historical interest; to protect existing amenities and places of natural interest or beauty."220

The scheme then proceeds to define and describe the zoning structure of the planning area and to provide for such things as roads, erection and use of buildings in all zones, the use of undeveloped land, recreational and playing fields, special industrial buildings and specified roads, the categories of hotels that may be constructed and commercial offices. Each of these land uses is described in great detail. For instance, among the buildings which may be erected in the residential area some are blocks of flats; and a block of flats is defined in the plan as

"a building other than a Double Dwelling, Special Block of Flats or Terrace of House, of a minimum of two storeys in height, designed to contain exclusively more than two self-contained dwelling units and includes within its meaning the provision of such facilities and accommodation for the preparation and communal consumption of meals, as may ordinarily be required for the normal convenience of the inhabitants of the block of flats."

The other types of dwellings mentioned in this definition are separately defined in the same text. After enumerating and describing all the zones, the scheme deals with certain land uses which require the consent of the planning authority notwithstanding that such uses are indicated on the map and are permissible under the scheme. Moreover, the planning authority may withhold consent if in its opinion the proposed development is in conflict with the proper planning of the area. In any case, the authority may grant the consent subject to further modifications and conditions which are not necessarily indicated in the particular scheme. In addition, the authority is empowered to change the use of any building, or part of any building, land or plot of land, either for a temporary period or subject to such conditions as the authority deems fit, contrary to the

provisions of the scheme. After the text, there follows a simple diagram which describes the zones and what buildings or other developments may be authorised therein. There is an indication of how such buildings or developments are to be used and what uses require the consent of the local planning authority. The diagram is then followed by an accurate cardinal map drawn to scale putting the zones in perspective and the zones are coloured differently for the purposes of clarification and identification.

The Dar es salaam Master Plan was prepared in such a way that it is much more detailed than the Jinja Plan.²²¹ Each land use is dealt with separately and requires the reproduction of the Dar es salaam map so as to show its position and extent in relation to other uses. Thereafter the map is 'dissected' and each section reproduced on a separate page to indicate how it is to be affected by the plan. For example the central area of the city has its own section plan indicating current and proposed uses. The transportation section not only shows the proposed roads and streets but also the probable number of vehicles likely to use the transportation system. The industrial zone section shows the proposed nodes of growth and their relation to the road and railways system and to the Dar es salaam harbour. To emphasize detail we may take the description of shopping activity which is included in the Dar es salaam plan:

"The major shopping activity of Dar es salaam takes place between 8:00 am and 12:30 pm at which time shops are shut down. At 2:30 pm the activity resumes, cars return to the street, noises begin and life returns to normal. Shopping takes place in three sectors of the centre area, each with its own character and racial background, and each strongly divorced from the other. The European-African section is concentrated

on Independence Avenue from Azikiwe Circle to Independence Square. To the west is the Asian commercial section with its relatively homogenous distribution of activity, due to the constant relationship of uses and their constant densities. Here shops are located at street level with 4 to 5 levels of flats above. These streets take on both a living, and a shopping and business function. This area has very distinct boundaries which give it a feeling of social isolation. In both sections a great conflict exists between cars, pedestrians and cyclists. Lack of parking facilities forces street parking.

Only in the true African heart of the city does the activity assume a constant and flurried degree of activity..... The activity pattern of Kariakoo is almost completely introverted towards the central market and its congruent shopping activity. The market itself serves a much larger area extending beyond Kariakoo. All of the African sections of the city, including the most distant from Kariakoo such as Temeke and Kinondoni, use this market as often as three to four times a week. Those in closer proximity, such as Magomeni, Ilala and Buruguni visit the market almost daily."222

It is these characteristic details that highlight the problems and their symptoms for which the plan is to be prepared. From the description above the planner will have to provide parking facilities in the European - African zone. The traditional market of Kariakoo, besides being a place of shopping, is also a meeting place of friends and relatives and, in essence it serves as an extremely valuable form of recreation and social contact. A planner who is not familiar with the latter aspects may simply provide minimum facilities for shopping. Had he been aware of these aspects he would have realised that his plan is inadequate. The importance of analysing problems that may be peculiar to an urban area may be illustrated further by the preparation of the Kisumu Physical Development Plan of which Hogsbro mentions in a paper,

"Another problem is caused by the people living in the western part of our future town area. They are within the commuting zone and live on subsistence farming and fishing as well as part-time employment in Kisumu. The density is about 5 persons per hectare- and the question is what to do with the land and the population. The land is too expensive to be bought by the Government. Instead we have found a solution which we call a "Shamba Town". This is seen as an intermediate stage between rural and urban development."223

In fact, for all the East African urban planning areas it would be unrealistic of planners not to take into account the fact that a large per centage of the population to be planned for is made up of cultivators at the subsistence level.

Invariably, the planning scheme will contain a power for the planning authority to vary its conditions in light of new circumstances or of events not contemplated during the preparation of the scheme. The Kampala Plan authorises the City Planning Committee to grant a relaxation of any restriction imposed by the scheme on the use of any land or building or any other restriction contained in the scheme after considering the effects of such relaxation on the adjoining properties.

Every such relaxation shall be reported to the Town Planning Board. Each planning authority is further empowered to consider and propose new schemes or alterations to the existing schemes irrespective of whether or not there is a scheme in operation at the time of such consideration or proposition. This means that notwithstanding that permission has been granted for the carrying out of a land use development and that operations in that development have actually commenced, the planning authority may alter its scheme so that such development is no longer permissible in that particular area or zone.

The developer may be ordered to halt all the operations subject to a further decision or the right of compensation. Since a land use plan cannot be fully appreciated without maps and illustrations it is proposed to reproduce examples of these in the appendix.²²⁴

PART C: IMPLEMENTATION OF THE PLAN

LEGAL EFFECT OF THE PLAN

A distinction must be made between an outline or structure plan and a detailed or local plan. However, in so far as both must be prepared in accordance with the formalities and procedures contained in the enabling legislation they must conform with their requirements otherwise they can be challenged on legal principles. On the other hand, whether or not the contents of either are binding depends on a number of factors including the nature of the enabling legislation, the particular content under consideration and the party concerned, that is whether it is the planning authority itself or a private individual. On completion, the plan comes into force on a day to be appointed by the planning authority and approved by the Minister. In general terms an outline plan is a mere guide. In essence it is a statement or a series of statements expressing a general framework within which the development of a given area is likely, and should be allowed to take place, in order to achieve certain social and economic objectives. It attempts to predict probable growth, and allocate in advance the spaces probably required for various purposes at different stages of expansion. It should contain a description of a unified general physical design of an urban area, and attempt to clarify the relationship between the physical development policies, social and economic goals, and aspirations of the community on the one hand, and the physical features of the land to which it refers on the other. There are occasions however when the plan ceases to be a mere guide and becomes a ruler. This happens when the enabling Act lends immediate binding effect to certain aspects of the plan. In some planning areas

the outline scheme itself may be made the regulatory measure for certain activities such as the laying out of streets and parks. In such cases, the effect of the plan is as binding as if it were enacted in the enabling Act. It has been said that this is contrary to the theory of the outline plan as understood by many planners. They would regard it as in no way legally binding until or unless its recommendations have been translated into official changes of the zoning map.

A local planning scheme is a device for controlling the development of an urban complex according to a predetermined outline plan. It is the tool for implementing the latter and unlike the latter it identifies rights and obligations within the area in which it operates. In this sense then it has legal status. But the legal status created by a plan is fundamentally different from those under any ordinary substantive law. The status lacks certainty and continuity. It is liable to change from time to time depending on the inclination of the planners and new circumstances. For instance, it does not guarantee that anything contained in it is permissible or prohibited, as the case may be. It is thus difficult for any developer to know at any one time whether any authorised scheme prevails or that any zone is legally open to him for development. When the preparation of the Kampala Plan was completed, the local planning committee received instructions from the Town Planning Board to give careful consideration to the important matter of advertising and as a result of the directions the committee inserted a new clause in the text of the plan to the effect that

"While the local authority is aware that permission must be given for adequate advertising in commercial zones, it nevertheless reserves the right, under the

scheme, of complete control of the type, size and character of advertisements and of the places where such advertisements would be exhibited."225

The new clause necessitated the resubmission of advertisement applications that had been considered under the scheme as originally prepared. The legal impact of a plan is significant only in the sense that it imposes control on physical development. In the United States of America and in the United Kingdom it has been stated that

"And in the four broad areas - public works, zoning, sub-division, and streets - thus far traditionally assigned for impact by the Master Plan, no consistent pattern of interpretation of the effect of the plan on the real world has yet emerged in the legislation or judicial opinions."226

In East Africa it is not so much inconsistency as lack of decisions on this point that appears to dominate this aspect of the planning process. It is therefore always advisable that whenever one wishes to develop urban land or change use of such land, even in areas where the scheme does not require the specific consent of the planning authority, one must make inquiries at the planning authority's offices before proceeding with the particular activity.

It has been argued in England that a property owner seeking to attack a plan in court may have his action dismissed on one or more of several grounds.²²⁷ The court may view the suit to be premature because, for example, the planned - for use indicated in the plan can be litigated when and if rezoning for the actual use actually takes place. A case arises where the adoption of the plan may result in the lowering of property values. For example, if the plan indicates that land once zoned industrial uses was to be zoned for agricultural uses, land values might be lowered.

Ordinarily, if property values are lowered as a result of public action, the courts will entertain a suit as to whether the public action is unreasonable to the point of constituting a taking without due regard to legal requirements. However, in the case of adoption of the plan, the plan may never be carried out and damages if any are likely to be speculative. It is doubtful therefore whether a court would be likely to consider the mere adoption of a plan as constituting a taking, a point fully discussed in the American case of Cochran v. Planning Board of City of Summit.²²⁸ Telling has enumerated five legal consequences of the development plan in England as follows:-

- "1. Where it is proposed that land should be acquired by compulsory purchase under section 112 or 113 of the Act of 1971, the Minister may disregard any objection to a compulsory purchase order which amounts to an objection to the plan itself. Where land is rendered unsaleable except at a greatly
2. reduced price by reason of some provision of the development plan, an owner - occupier may be able to serve a purchase notice on the appropriate public authority.
3. Where a development plan provides that land is to be used for the winning and working of minerals, compulsory working rights may be obtained from the High Court.
4. The programming in the development plan may affect the right to compensation for refusal of planning permission under Part VI of the 1962 Act.
5. The provisions of the development plan may materially affect the amount of compensation obtainable on compulsory purchase."²²⁹

These consequences in one form or another with the exception of number three have been incorporated in the relevant planning statutes of East Africa.²³⁰ Lastly, any wilful obstruction or contravention of any provision contained in a plan or scheme is an offence punishable on conviction by a fine or

imprisonment or both.²³¹

ENFORCEMENT OF THE PLAN:

From a development viewpoint the most important stage of a plan is its implementation because it is when both the policy-maker and the planner begin to see the practical results of their efforts. It is then that the theoretical expressions of planning begin to acquire concrete shape and meaning. At the beginning the planner is anxious to know whether the words and expressions he has preferred in the scheme mean the same thing to landowners, developers and the public at large. He is not absolutely certain whether the details of his scheme are practical enough and, if so, whether they are enforceable. These doubts remain until someone begins to carry out operations under the plan. It is then that the implementation of the plan is revealed as a physical phenomenon rather than as a paper exercise. Premchand Nathu & Co. Ltd v. The Land Officer²³² has shown the extent to which misunderstandings in the planning process can be carried. A contrary decision was reached in Hassanali R. Dedhar v. The Special Commissioner And Acting Commissioner of Lands²³³ where the court held that failure by the developer to satisfy the planning regulations was contributed to by the planning authority itself. In both cases it was possible for one set of planning conditions to lead to different decisions, all well argued and possibly correct under circumstances that the planners thought were establishing one criterion. Equally confusing may be the law applicable. For instance in the Dedhar case counsel for the appellant relied on Gregory v Wilson (ibid) and Commissioner of Lands v. Shandas Horra (ibid) which the court dismissed as being unjustified in the circumstances of East Africa. In the case of compulsory acquisition of

land, the planner wishes to know what amount of compensation will be payable. In Puram Chand Many v. The Collector,²³⁴ the court was faced with the task of interpreting the meaning of "market value" compensation under the Indian Land Acquisition Act, 1894. The Court defined the market value as the price which a willing vendor might be expected to obtain from a willing purchaser. A purchaser had to be one who, although a mere speculator, was not a wild or unreasonable speculator. He had to be of good ability and well qualified to put the land to the best advantage. In considering whether to use an actual sale of comparable land as a yard-stick of value, the court must consider whether the purchaser paid so high a price without displaying the caution of an ordinary purchaser. If the value of the land is to be fixed by reference to the potential future use of the land its future must not be entirely conjectural. It must be estimated by prudent business calculations and not by mere speculation and impractical imagination.

In considering the renewal or redevelopment of the urban area the planner may wish to demolish some buildings and erections. For this purpose he may resort to Public Health Legislation. In Mohamed Ahmed v. R,²³⁵ a resident magistrate, having found that the house in which the appellant lived was unsafe within the meaning of section 59 of the Public Health Ordinance and beyond repair, ordered its demolition; and when the order was not complied with because the appellant refused to be moved the magistrate directed his forceful eviction. The appellant applied to the High Court for an order of prohibition. The application was refused and the appellant appealed to the Court of Appeal for Eastern Africa. Although the appeal was dismissed on other grounds the court held that:

"Before the court can make a demolition order, it must be satisfied, not only that the condition of the premises constitutes a nuisance, but also that repairs to or alterations of the premises are

not likely to remove the nuisance."

The planner may find that a developer has substantially departed from the specifications of the plan or scheme and nevertheless be bound by the completed development as was held in the City Council of Nairobi v. Ata Ul Haq.²³⁶ In that case the Council argued that the works of the respondent had not been completed in accordance with the contract and therefore were entitled to deduct a certain percentage from the moneys due to him for the defects in the development. The court found as a fact that the Council's inspectors had allowed a low standard of work to be proceeded with by the respondent and that although they were not estopped from alleging breaches of the contract, the actions of their inspectors and the fact that they failed to take mitigating action in respect of, inter alia, patent defects would be reflected in the amount of damages to be awarded by the court.

The cases discussed so far have been dealing with implementation through judicial proceedings. This method is often resorted to as the ultimate sanction. There are other methods which ensure implementation without the necessity of going to court. These were mentioned earlier

as registration, licensing and inspection. The planning authority may wish to register all prospective developers; its licensing officers will ensure that such developers are professionally qualified, that they are of good character and that they have the necessary funds. The inspectors will ensure that they carry out the permitted activities within the terms and conditions of the Plan. The Uganda Trade (Licensing) Act, 1969,²³⁷ may be taken as an illustration of this method. The Act was enacted to encourage Ugandans and to discourage non-citizens of Uganda from dominating the commercial and trading areas of the country. Consequent upon the

coming into force of the Act and notwithstanding the commercial and trading zones of the towns no person was to erect commercial buildings or engage in trade in areas other than those declared general business areas without licence. The Act was to control persons who traded and the areas and goods or business enterprises in which such trade would be carried on. All traders and industrialists had to be licensed first before they carried on the specific trade, commerce or industry. The Act contained a schedule which prescribed fees and types of licences required for certain areas, trades and businesses. The licensing authority was empowered to refuse a grant of a licence without giving any reason for its refusal. Appeal from such refusal lay to the Minister whose decision was final. To ensure that the provisions of the Act were being complied with offices of inspectors were created. Inspectors were authorised to enter, at all reasonable hours, any premises and to examine licences which the licensee was obliged to exhibit in some conspicuous place on his premises. They were empowered to examine books of account and to ask any questions and seek any information which was relevant to satisfy them that the provisions of the Act were being complied with. The Act created offences and prescribed penalties against violators of its provisions. In the main, the success of the Act depended on the vigilance and integrity of both the licensing officers and the inspectors. Recent commissions of inquiry in Uganda have revealed that in most instances these qualities had been lacking. In addition, the administrative bureaucracy to implement the Act had been too inadequate and imprecise to have any real impact.²³⁸

It has been stated that money is one of the agencies of planning and development. Certainly, money is an essential requirement in the implementation of the plan. In an earlier chapter the funds of local authorities were examined and discussed. Apart from local sources many urban

developments in East Africa are financed by foreign investors and foreign aid. It can be argued that any regulations passed to protect foreign investments are designed to ensure the implementation of the plans. The three East African governments found it necessary to enact laws for the protection of foreign investments within the region. These laws are known as Foreign Investment Acts.²³⁹ Under such an Act the foreign investor has only to prove that his assets have been brought into the country concerned in accordance with its fiscal and exchange control regulations. Under the Act the government then guarantees the repatriation of the investor's profits after taxation in the approved currency and at the prevailing official rate of exchange. The Acts also provide that any other approved proportion of the net proceeds of sale of all or any part of the investment and or the principal and interest of the loan or investment may be similarly repatriated as specified in a certificate of operations. The Acts further provide that in the event of compulsory acquisition of the property or works in which foreign money is invested, the government undertakes to provide compensation in respect of an approved proportion of the value of the investment as prescribed in the certificate of operations. The compensation is to be paid within 6 months from the date of taking possession. Various development schemes within the urban centres of East Africa are currently supported by foreign investments and aid which are protected by the Foreign Investment Acts.²⁴⁰

In practice these Acts have not been as protective as foreign investors would wish. A number of events in the 1960s led to a crisis of confidence in the East African economies leading to a reduction in foreign investments and aid. This point will be discussed in greater detail in the next chapter.

In discussing implementation of planning regulations in East Africa, it is important to bear in mind that public authorities rather than private persons or firms are responsible for the greatest part of urban development.²⁴¹ For this reason there are certain aspects of planning which figure predominantly in countries where the reverse is the case but which play only a small part in the planning laws of East Africa. East Africa has a dearth of cases dealing with topics like planning applications and permissions or refusals thereof, enforcement notices and improvement or betterment compensation.²⁴² On the other hand, if one takes a country like England or the United States of America, one is likely to discover that court decisions involving the same topics dominate planning law cases.²⁴³ It is theoretically possible for planning disagreements to occur in East Africa between local planning authorities and the central planning bodies on the one hand, and between the authorities and the Minister, on the other. In practice however, these disagreements are rarely expressed in public, nor have they been the subject of litigation in East African courts. We have noted that under various Local Authorities Acts, local authorities were firmly placed under the control and direction of the respective governments.²⁴⁴ They do not enjoy the same freedom and semi-autonomy which local authorities and governments enjoy in many other countries. Both politically and administratively, local authorities in East Africa are extensions of central government, and officers and employees of local authorities tend to be agents of the various Ministries of the central government.²⁴⁵ Moreover, unlike the local authorities in more economically developed countries, they depend almost entirely on government grants for their financial requirements. They are not therefore in a strong position to challenge the planning decisions of the central government ministers as many authorities do in the United Kingdom and the United States of America. Consequently, whatever the Minister approves

is likely to pass as law without public protest from the local authorities affected.

There have been one or two incidents when a local authority was bold enough to challenge a Minister's decision but in each case the challenge was ineffectual and in one particular incident it led to the dismissal of the councillors. The latter was the case of The Acholi District Council.²⁴⁶ The Council's planning committee proposed an industrial scheme for the area which was approved by the local authority. The authority made representations to the Minister concerned. However, for political reasons and contrary to the advice of expert planners, the Minister decided to award the industrial scheme to a rival local authority instead of approving it for the Gulu planning area. The Gulu Council[^] ^{protested and} sent a delegation to the Minister to express their disappointment and to persuade him to change his decision. The delegation was sent away by the Minister without being heard. Shortly afterwards the Government dismissed all the protesting councillors and appointed new ones by statutory instrument notwithstanding that the protesters had not completed their term of office in accordance with the provisions of the Local Administrations Act. The conclusion to be drawn from the foregoing discussion is that with the approval of the Minister planning and zoning regulation can either be ignored or infringed without the local authority or the planning body taking any action.

Few enforcement provisions do exist in the various planning Acts to operate against private developers; but because of what has been said they only affect those who have not obtained the Minister's consent. It is provided that no one may erect or demolish a building, or works, establish or change a land use without the permission of the local planning authority.²⁴⁷ In the event of a refusal by the authority to grant planning permission, the aggrieved party may appeal to the planning Board or to

the Minister, as the case may be. A further right of appeal exists from the Board or Minister to an arbitrator appointed by the Chief Justice. There are also provisions covering situations where persons have developed land within a planning area without planning permission or contrary to the zoning scheme. In such a case, the local planning authority may serve an enforcement notice on the defaulter to remove or change the development. Failure to comply with the notice is an offence and in any event the local authority may remove or demolish such development and claim the expenses incurred as a civil debt against the person in breach.²⁴⁸ Section 17 (1) of the Uganda Town and Country Planning Act authorises a local authority to compulsorily acquire any land within the planning area, if the land is required for roads, open spaces, gardens, schools or other public institutions. The same power may be exercised to acquire any land which has not been developed in accordance with the outline or detailed scheme. The authority must however be satisfied that the owner or occupier has failed to take reasonable steps to develop the land himself in accordance with the scheme. Section 18 provides that a landowner or occupier who is affected by the implementation or enforcement of a planning scheme shall be compensated. He must show that the implementation of the scheme has either injuriously affected his property or rendered his own development of the land abortive through revocation or modification of the scheme. In the latter event, he must prove that he has previously incurred expenditure.

The forecast of many of the experts discussed elsewhere is that the burden of developing urban plans and schemes will gradually move from public authorities to landowners, occupiers and private developers.²⁴⁹ The governments will not be able to finance or to find all the capital

necessary for all the development. Moreover, it has been noted that post-independence governments, have, at least in theory, encouraged the indigenous population to assume greater responsibility in developing urban centres. Once this move is in full swing the topics which have hitherto played a minor role in the planning law of East Africa may assume greater importance. The Minister's authority may be confined to approving planning schemes while local authorities and planning authorities take over the responsibility of granting planning permission and enforcing planning regulations.²⁵⁰ Detailed rules of implementation and enforcement will be essential if development is to proceed on an orderly basis. However, before these changes are introduced the governments must translate the theoretical policies of encouraging private development into concrete and practical terms. As yet, no such rationality or concrete measures have been taken.

CHAPTER SEVEN: THE LAW OF HOUSING IN EAST AFRICA

INTRODUCTION

Since a big proportion of land within the planning area is likely to be zoned as residential and a large percentage of the money available for development spent on residential buildings, the urban planner needs to pay careful attention to the law relating to housing including the mechanism of the housing market, building regulations and construction schemes, mortgages, rates and rents. The problems which confront the planner in providing adequate and suitable land and in making building regulations may not be as great as the problems which face the people who are responsible for providing accommodation for the ever increasing urban population. The planner can afford to wait for his plans and schemes to be translated into action. The schemes may be started immediately or may be postponed to some future date or may never be realised at all. Moreover, as we have seen the planner may be at liberty to alter his land use plan and in some cases to abandon it altogether. On the other hand, the dilemma facing the housing provider is that he cannot afford to wait. There are homeless people waiting to be accommodated as well as obsolete buildings which make the lives of those who dwell in them hazardous.

A great deal has been written on the problems of housing in East Africa. The current National Development plans have enumerated and described some of them. Writers like Tribe, Bennett, Langlands, Oram, Leaning and Atson, among others, writing in learned journals and reviews, have examined and discussed these problems as they observed them while studying and researching into East African housing situation.¹ Between independence and 1970 several government-appointed committees or missions studied the same problems in relation to government, institutional and private housing.² All the United Nations missions that have undertaken research studies in East Africa in

the field of urban planning and economic development have each had something to say about the urban housing situation, particularly as relating to the low-income groups of the urban centres.³ Both Southall and Gutkind made similar studies in the 1950s with special reference to the Kampala area.⁴ In 1956 both scholars provided a short but comprehensive historical sketch of Kampala and Mengo to preface their sociological study of the African residential areas of the city.⁵ Gutkind also published his research findings about the housing situation during the pre-colonial era.⁶ Among other writers on the subject there have been Temple (1963) and K. Vorlauffer (1967).⁷ Because of these detailed studies on the housing needs and problems in East Africa it is not intended to cover the same ground here though many of their findings and recommendations will in the main determine some of our conclusions to be reached. These writers and scholars provide the background of this discussion even though it may be relevant at times to summarise their findings for the purposes of giving reasoned argument for our own conclusions. A study of these materials show that the problems of housing in East Africa are closely related to the following factors, namely, the past colonial policies and practices, lack of co-ordinated policies and infrastructures, the operation of land tenure laws, the existence of unrealistic building regulations, the inadequate numbers of building firms and materials and lack of sufficient capital.⁸

SECTION I: THE COLONIAL SITUATION

During the colonial period, the urban planning area was designed to be small because it catered for a relatively small population, mainly of the European and Asian immigrant communities, administrators, artisans and traders. The Africans, though forming the majority of any town's residents at any one time, were always regarded as strangers whose homes and housing needs were provided for in the villages of their tribal areas and the peri-urban areas of the towns. Those of them who insisted on establishing permanent residences in the towns - and these were many - did so at the sufferance of the town authorities and in areas which, although physically part of the town, were regarded to be "outside the jurisdiction of town authorities" both administratively and socially. These African areas developed into overcrowded slums and shanty towns with little or no assistance from the urban authorities or the government. In cases where some financial assistance was given to ease the housing situation it was because of health reasons rather than the desire to improve the living conditions and standards of the indigenous inhabitants. Thus, Southall observed in Uganda that

"up till the Second World War, the Uganda Government devoted little attention to the housing of urban Africans except in the case of its employees The majority of those Africans who are attracted to the towns have been left to fend for themselves in finding house accommodation and in organising their urban existence."⁹

Ernest Weigt discusses the same indifference exhibited by the colonial administrations and concludes that as a result there were overcrowded native quarters established at the edge of the town and sometimes outside it to avoid the strict building regulations which were always enforced inside the town boundaries. Writing on Nairobi, Richard Vengroff observed,

"Local Government undertook responsibility for the construction of African housing in ghettos on the fringe of the city and since housing was government controlled and demand always exceeded supply, those in need of accommodation were placed on long waiting lists."¹⁰

The same characteristic was observed in the Tanzanian towns by John Leaning when he wrote,

"somewhat removed from the commercial centre and far removed from the low density area is the high density area intended for Africans. In these areas the building requirements are minimal. Most of the houses are of a swahili type and between 50% to 70% of them are of traditional mud construction. Almost all the houses are partially or completely rented. The average lot with a five room house would have a population of 10 to 15 people in three or four family units, giving a density of 90 to 140 persons per acre including roadways. This compares with 4 persons per acre in the low density areas where the European settlers live and 55 to 85 persons per acre where the Asians live."¹¹

It was not until after the Second World War that pressure began to be exerted on the East African colonial governments to recognise the Africans as part of the urban scene. The Joint East African Board, having taken note of the efforts the South African government was making to house the Africans there, recommended that the Town Planning Authority and other authorities should reserve areas of land large enough to permit proper planning of native dwellings and to provide the native population with adequate amenities.¹²

However, this recommendation was not taken seriously, for 10 years later we see the East African Royal Commission criticising the governments for continuing to regard the Africans as temporary inhabitants of the towns in which they worked as unskilled labourers. The Commission made a strong recommendation for the integration of the Africans into the urban communities and the local colonial administrations reluctantly accepted it.¹³ Of the three East African Colonial Governors only Cohen of Uganda showed any great enthusiasm for the newly recommended policy of African housing. In his reply to the Commission's Report, he pointed out that his government was relaxing the building standards as envisaged in the Public Health Ordinance and Regulations to enable more Africans to build houses of their own in towns and that in certain cases the government would be giving

loans for this purpose. Cohen's statement is clearly supported by the record of his administration not only in the housing policy but also in other matters such as education, civil service and agriculture.¹⁴ We have seen that the early colonial policy was to develop the towns mainly for European and Asian communities and to regard Africans as temporary visitors and that when the latter found it necessary to live in the towns they were segregated from the former communities without any adequate housing provision. Cohen changed this by introducing two principal policies. Under the Housing Regulations, government employees' accommodation was to be offered according to status and salary rather than race. Consequently, many senior African civil servants found themselves living in quarters formerly designated as European or Asian.¹⁵ In 1954, the Cohen administration passed the African (Loans Fund) Ordinance to enable both the government and local authorities to grant loans to Africans who wished to build houses and commercial offices for their own use in the appropriate zones of the towns, whether or not such zones had in the past been dominated by either the Europeans or the Asians. In addition, the Cohen administration encouraged the use of local materials by ordering the Ministry of Works, in collaboration with the Ministries of Planning and Health, to experiment with locally-produced materials in the construction of buildings. The new regulations empowered local planning authorities to "grant a relaxation" of any building restrictions which had for so long kept the Africans outside urban centres. Any person refused a relaxation could appeal to the Town Planning Board and therefrom to the relevant Minister. Not all the policies advocated by Cohen were achieved during his term of office as Governor. It is to be appreciated that all the planning authorities including local authorities were still dominated by European and Asian members who did not always agree with the policy of integrating Africans in what they regarded as their

exclusive domain. Indeed, disregard of this policy was at times so blatant that the government would issue confidential instructions to remind the civil servants of their duties under it.¹⁶

The other East African comments on the East African Royal Commission Report were more or less predictable. In the mandated territory of Tanganyika, the Governor-General gave views that were almost identical with those of Cohen except that he considered the role of accommodating Africans in towns as being played mainly by private landlords and developers instead of direct grants by the government. This is one of the reasons why most African houses in Tanzanian towns were built by private entrepreneurs who were often Africans themselves. Unlike Uganda, Tanganyika did not consider it necessary to modify the building standards in the urban centres and the freedom of choice open to the Africans was limited to the peri-urban areas of the towns.¹⁷ In Kenya where the influence of European settlers was greater than anywhere else in East Africa the Governor and Commander-in-Chief of the colony, Sir Philip Mitchell, was reluctant to accept the commission's findings and recommendations. For instance, he rejected the contention that there were slums in Nairobi, observing that the slum areas of Nairobi formed another part of the population (the Africans) and should not be counted in reviewing the development of Nairobi. We have also noted that the Report provoked adverse comment from the European community as was reflected in the Current Economic Review of East Africa.¹⁸

Nevertheless, the Royal Commission Report and other bodies together with commentaries by sociologists, anthropologists and planners and, the Africans demands to have a better deal in the housing policies of the region, had considerable influence on future colonial administrations.¹⁹ Each of the East African governments established or restructured the department of African Housing with special emphasis on urban residential quarters. Although the main object of the department was to house African government

employees it also gave some technical and financial assistance to local authorities and other institutional bodies to provide housing facilities for their own African employees. In limited cases, the department was authorised to grant loans to enable Africans who were willing to construct owner-occupier houses. It must be conceded however that the number of people who benefitted from these facilities remained insignificant in comparison to the numbers of people who were not affected by the government policies. Moreover, the bulk of the African housing development continued to be undertaken in certain prescribed areas, especially of the peri-urban lands where it was uneconomical to provide essential services. Thus, most of the 'privileged' Africans continued to live without the necessary amenities such as water supply, electricity, recreational centres or tarmac roads. In many cases, the house constructed for the African was nothing more than a one-roomed cubicle with space for a bed only. He lived, cooked and did his washing outside the cubicle and came in only to sleep. It was felt that the provision of better housing facilities might encourage a further influx of Africans into the towns and the only way to stop it was to provide such housing as would give the bare minimum of facilities suitable for single employees. It was irrelevant that the 'single' employee was married with a number of children and relatives to look after and care for. Occasionally, housing estates would be established "to provide a better standard of housing for the higher-income-group of African wage earners" but because there was an acute shortage of housing, many of these wage earners would end up renting the accommodation originally intended for the single employees.²⁰

A contrast may be made between the housing of the immigrant minority and the accommodation of the higher-income group of Africans on the one hand, and between the latter and the housing of the least privileged urban Africans on the other. This contrast is vividly brought out in Temple's

"Kampala - Influences upon its Growth and Development".

"Both Nakasero and Kololo represent planned high class development on spacious lines. The layouts differ little and contrasts result largely from different periods of development. Characteristic of the well-wooded avenues of Nakasero and the comfortable old P.W.D. houses of the 30s, with large private gardens, corrugated iron roofs, spacious, cool, airy rooms and varandahs. On Kololo, developed in the post-war period, blocks of flats for Government officials and the more ordinary houses owned and built by commercial firms for their employees are interspersed among the ultra-modern residences of the wealth Asian business families and the Kampala elite. African residential areas within the Planning Area are late developments and occupy sites close or adjacent to industrial area at Nsambya ... These areas show a formal unimaginative layout of small permanent living units with no character. Here in a matter of yards after crossing the city boundary into the Kibuga, brick-built houses and paved roads are frequently replaced by a squalid jumble of mud-walled shacks with corrugated iron roofs; this is an area generally lacking proper roads, water supply or sanitation Here small shops, selling a limited range of everyday goods, jostle with small African laundries, beer halls, bicycle repair shops, brothels and small catering places dignified by the name of HOTEL. All these are packed together with no semblance of order, haphazard and ugly, further disfigured by the rusting and broken down shells of innumerable old cars. Until recently all this area was outside the planning control."21

The study contrasting residences of higher-income groups and of lower-income groups among the Africans was undertaken by Parkin. He noted that the former were always sited on a higher elevation than the latter with the following results:

"When there is heavy rain, it runs down from the (higher) to the (lower) houses, leaving the latter often extremely muddy, and the former able to dry very quickly in the sun. With the rainfall all the year round in Kampala, lower Nakasero residents curse about the mud and even have to cope with the occasional snake, brought along by the water, let alone having to put up with innumerable frogs who have made their homes in ruts and hollows created by the rains. These residents constantly grumble about communal latrines which serve most of the lower groups of houses. The upper houses have private pit-latrine surrounded by hedges. The lower

are without hedges and passing strangers are able to pass through the lower group of houses. One is forced with a superficial acquaintanceship with one's neighbours in lower Nakasero."22

The colonial policy to ignore the housing needs of the least able in an urban area cannot be explained in terms purely of racialism for we note that the conditions of the working classes in urban Britain at the turn of this century were not any better than those observed in East Africa. In Blyth, Northumberland, for example, the average infant mortality rate for the years 1908 and 1911 was still 142 per 1000 and in the worst districts of the town it was as high as 267 per 1000. "I can fancy the outcry" wrote the medical officer, "if in a herd of cattle the same mortality existed among the calves". The Commission of Inquiry into the State of Large Towns and Populous Districts in Britain had earlier noted that the number of persons inhabiting houses in Sunderland was too great to admit of their living in a state of good health. Apparently, one room generally contained a whole family consisting in many cases of seven or even more individuals and not infrequently, pigs. Sanitation facilities were minimal and the taxing of windows which prompted property owners to avoid providing windows in their houses or blocking those which existed led to much sickness and mortality. Many of the labouring classes had to resort to imagination to escape from poverty and unhealthy conditions of their environment. Thus, it was not unusual in the poor quarters of Sunderland to use urine as a washing matter: "The urine is kept in stone bottles till very strong, and then added to the soap suds employed for washing. Less soap suffices when such an addition is made and the entire composition is considered much more cleansing."23

In East Africa it so happened that because of the colonial structure and development it was the Africans who formed the working classes. The other races having entered the region with independent capital, technical skills and education were able to exploit the situation to their advantage.

Private employers were encouraged to provide housing facilities for their employees. For instance, Section 32 of the Uganda Employment Ordinance provided that:

"During the period of service the employer shall at all times and at his own expense cause every employee in his service to be properly housed in accordance with rules under the Ordinance or shall pay the rental of proper housing and accommodation and shall observe all reasonable directions which may be given by an authorised officer in respect of sanitary arrangements."²⁴

The Section contained a proviso to the effect that its provisions would not apply to employees who had alternative accommodation. Interviews with past employees who were supposedly protected by the Ordinance have shown that in many cases the employers evaded the operation of this law. An employer might supply a pound of sugar or salt or give an extra shilling as an alternative to providing accommodation. In neither case was the 'payment' sufficient to provide the employee with shelter. Some employers insisted on engaging labourers who could provide their own accommodation. The Labour Reports of 1948 to 1958 show that more than half the persons employed in private firms in Kampala, Jinja and Kilembe Mines had indicated to their employers that they would find their own accommodation. Yet more than 60 per cent of those who so indicated were from outside the districts of their employment. Moreover, of those given accommodation in the sugar, coffee and cotton plantations, many were simply given plots on the owners' land on which they constructed their own shanty towns during non-working hours.²⁵

The Ordinance established a system of inspection; but from the inspectors' reports it is difficult to tell whether the inspectors were always satisfied beyond doubt that the Ordinance was being complied with. For instance, the official Labour Journal of September 1949 shows that the inspector visited Kirkhede Mines Labour Camp and stayed in the Manager's residential quarters for 3 days. On the first day he inspected the labour

books and was satisfied as to the number of people housed by the Mines Company and those who lived in the neighbouring villages. He inspected the quarters of those housed and found them clean and well kept. He recommended that the company should construct married quarters for some of its employees. There is no evidence that he interviewed any of the employees with regard to the housing situation. Another difficulty was the fact that the employees were often illiterate and ignorant of their rights. Trade unions are recent developments in the history of East Africa and it is only since independence that trade union leaders have mounted considerable criticism against employers and demanded fair treatment of their members.²⁶ It should also be remembered that communication between employees and labour inspectors was very difficult. Employees came from different parts of East Africa and spoke different languages. Few of them, if any at all, spoke or understood English or Swahili, the common language of the region. On the other hand, the inspectors tended to be expatriate Europeans in the colonial administration. Most of them were brought up under the notion that unless there were full scale complaints all was well and in accordance with law. They therefore tended to do the minimum work required by their duties except in cases where there was some labour dispute. The African employees saw the inspectors as part and parcel of the management and as likely to dismiss any complaint as being unjustified. Moreover, being largely unskilled, they feared that any criticism of the management might also lose them their jobs. With no prospects of finding alternative employment, their best policy was to keep quiet and tolerate bad conditions.²⁷ The Municipal Ordinances similarly directed local authorities to provide housing for African employees in their jurisdiction but as Section 43 of the Kenya Municipal Ordinance indicated the power was only permissive and it was largely ignored.

Under the building regulations certain minimum standards were prescribed. These included area, structure, materials, number of rooms and floor space.

For instance, the minimum space allowed for the construction of a residential house in the urban centre was some 30,000 square feet. In addition to the main building, a developer had to construct servants' quarters, garage, lay water pipes and tarmac the path leading to a main public road. The regulations defined a dwelling house as a building designed for use exclusively as one self-contained dwelling unit by a single family. This ignored the traditional system in East Africa of the African extended family.²⁸ Every plot had to be provided with space to park a car notwithstanding that very few African dwellers owned cars. Under the sanitary Bye-laws and regulations every builder or constructor had to provide temporary latrines and connect them to sewerage works notwithstanding that not in every case was the building site close to such works.²⁹ The Kampala Bakehouse Bye-Laws of 1952 prohibited anyone from carrying on the trade of a baker in premises whose floor throughout was not made of "flags, portland cement, asphalt, granolithic or other non-absorbent material." The walls of the bakery had to be painted with 3 coats of oil paint or oil varnish. Further, the building regulations stipulated that building materials had to be imported ones such as steel, corrugated iron, cement and concrete blocks. Apparently, this was because these materials could not be produced locally and economically or because the local materials such as wood, bricks and slate had been found to be less durable.³⁰ As these regulations were approved by the Minister of Health under the Ordinance, local planning authorities were not authorised to modify them.

SECTION II : THE POST-INDEPENDENCE SITUATION

The account given in the previous section gives a summary of the housing situation which the post-independence governments inherited from the colonial administrations. With the lowering of the British imperial flag throughout East Africa, the short-sighted believed that society would be

radically changed. We have seen that the end of colonialism saw an even greater influx of rural dwellers to the towns. Discrimination on grounds of race, class or nationality was no longer practised, at any rate, not legally, but discrimination on grounds of wealth would remain long after the departure of the colonial administrators. In theory, the nationalist governments were anxious to transform the towns from being dominated by the alien races. The transformation would be achieved partly through housing policies and partly through an economic parity between the races with a gradual dominance by the Africans.³¹ With the exception of Uganda since 1972 when there was wholesale expulsions of non-Ugandans and the expropriation of their property, the transformation has been a slow and sometimes a painful experience and it is likely to take more decades before it is realised, if at all.

The current housing practices in East Africa indicate surprisingly that there have been no major changes in the housing policies since independence. The colonial status quo appears to have been maintained with remarkable faithfulness by the post-independence governments. The colonial system under which the Government, local authorities and private employers provide their employees with residential accommodation has continued uninterrupted. The senior government officials and the urban elite have taken over the occupation of the houses vacated by large numbers of colonial administrators, Europeans and Asian settlers and businessmen. The labouring classes of the inhabitants have remained in the slum and the shacks of the shanty towns and the majority of the unemployed inhabitants or those who are self-employed in simple businesses continue to struggle on by themselves in search for residential accommodation. The elite of the towns have managed to acquire planning permission to develop the peri-urban areas where they have constructed sub-standard housing to let to the

labourers and the homeless at exorbitant rents. The post-independence administrators, like their colonial predecessors, admit that the housing situation in urban areas is getting worse but its solution is destined to a slow and gradual process. Meanwhile, for the ordinary urban East African, the independence of the State has changed nothing as far as his accommodation is concerned. The only change he can see is that the European and Asian population of the urban centre and in the exclusive residential areas are being replaced by the elite of his country who exhibit the same symptoms of affluence and who show considerable indifference to his own housing problems.³²

Mr. Tribe,³³ formerly of the Economics Department of Makerere University, has made extensive studies of the housing problems in both Uganda and Kenya. Tribe notes that in neither country is there a comprehensive and consistent housing policy. Admittedly, there have been attempts to deal with special aspects of housing. For example, in the case of Uganda, a committee was set up in 1958 under the chairmanship of C.A.L. Richards to examine the African Housing policy. The committee failed to reach agreement and no report was published. Subsequently, the African Housing Department was disbanded on economic grounds. In 1961 the government appointed another committee whose terms of reference were limited to examining the housing requirements of government public servants. After independence there was another Staff Mission appointed in 1964 "to assist the Government in the formulation of an overall development plan for the Kibuga area especially for the Municipality of Mengo." The Mission confined its main efforts to a pilot project of suburban renewal which considerably limited its usefulness in relation to an overall housing policy. The United Nations Teams which operated in Uganda between 1962 and 1966 considered some elements of housing policy but were mainly concerned with comprehensive planning and housing was regarded as an incidental matter. In respect of Kenya, the

field of housing has been paid greater attention than that shown in Uganda, but again as Tribe observes,

"in the housing sector in Kenya, there has been an absence of attempts to insert policies and developments observed into an overall framework of the socio-economic structure of the country. This has led some analysis of policy to make incorrect assumptions as to the objectives of policy."³⁴

The Kenya Government's housing policy may be discovered in several government publications including Sessional Paper no.5 of 1966/7 and Sessional Paper no.10 of 1967 as well as the Implementation of the Report of the Republic Service Salaries Review Commission, 1967. In addition there has been some useful published work on housing in Kenya carried out and reported by Bloomberg and Abrams.³⁵ The Housing and Rural Development Unit of the University of Nairobi has undertaken research in many aspects of urban housing and published the findings.³⁶ Papers by Harris, Houlberg and Jorgensen and Etherton may be considered as supplementary works to what the Unit has so far achieved.³⁷ In Tanzania, Bienefeld has assessed the long term housing policy for the Republic. Leaning discusses Tanzanian traditional housing while Grohs deals with slum clearance in Dar es Salaam.³⁸ The nearest each government comes to planning for a national overall housing policy is in the publication of the National Development Plan.³⁹ The current Five Year Development Plans of East Africa describe at length the problems of housing in urban centres. In many ways the Plans simply reproduced the conclusions of the experts and writers who have been mentioned. They do not have definite policy formulations beyond mentioning that the policies are still in the preparatory stages. In both Kenya and Uganda the colonial system of assisting those who are more capable to buy and rent houses and leaving those who are incapable to fend for themselves or return to the villages has continued to be maintained. In Tanzania there has been a slight change to the extent that those who are more capable are left to

fend for themselves with some assistance given to the less capable. Moreover, whereas in Kenya and Uganda public officers are permitted to build and acquire one or more houses to let at commercial rents while occupying government housing quarters in Tanzania these rights have been severely limited by the socialist measures introduced since the Arusha Declaration.⁴⁰

There is also the problem of adequate machinery for the co-ordination of the housing policy and its implementation. The number of bodies which are in one way or another concerned with housing is too large and their powers are not clearly defined. The most directly concerned is the Ministry responsible for the formulation of the national housing policy and its offshoot, the National Housing Corporation.⁴¹ However, the Ministry of Local Administrations with its Town Planning Department, the Town and Country Planning Board and the various local planning authorities have some considerable weight in the determination of housing policy variables. The Ministry of Health is responsible for the framing of building regulations under the Public Health Act. The Ministry of Public Service is again involved with the determination of housing policy for public servants. The Ministry of Minerals and Water Resources and the Department of Lands between them deal with surveys, registrations and the determination of land titles which affect the land on which residential houses may be built. The Ministries of Finance, Planning and Economic Development, inasmuch as they are concerned with the overall economic policy of the country and the finances available for development, may impinge upon housing policy and implementation thereof. The Ministries of Education, Health, Defence and Internal or Home Affairs are directly concerned with the building of institutional housing. Other bodies like the Universities, the churches, banks and private firms and companies are each involved in

building houses for their respective employees. Lastly, the parastatal bodies are responsible for providing accommodation for their employees even though they may be under the general direction of one or more of the Ministries already mentioned.⁴² Acting independently, but very much within the housing market are numerous establishments like foreign embassies and international organisations and firms and because these do not often lack the money to buy or rent urban housing they tend to take up many of the urban properties that might have been planned and intended for the local population.⁴³

There are thus numerous authorities concerned with the actual construction and distribution of houses but none can be said to have a clear indication of what the rest are doing in the field of housing. There is lack of a central organ entrusted with the ultimate power to determine the national urban housing policy. Each body or institution tends to confine its activities to the interests of its own employees and responding to the occasional call of the Government to deal with some specific and ad hoc housing situations.⁴⁴ The housing records in East Africa show that the only need to be catered for in housing is the 'effective need' which means that houses will be constructed on the demand of those who can afford to buy or rent them. This point has been emphasised thus,

"The effective need for housing, however, is determined by the level and growth of incomes, the proportion of income which families are willing to spend on housing, the availability and conditions of institutional credit finance for housing construction and purchase, and the price at which housing is provided."⁴⁵

East Africa has yet to reach a stage of development when urban housing programmes can be related to the urban population as a whole and when target production in housing is both quantitatively and qualitatively designed to the same end. Only then will the shelterless, the least capable and the low-income groups be credited with the housing priority they so richly

deserve. Housing has continued to lag behind economic development even though it is recognised nowadays that adequate housing is conducive to national stability and is a source of employment particularly during the construction stage.

The National Housing Corporation Acts established parastatal bodies responsible mainly for the construction of houses intended for letting or selling on a commercial basis.⁴⁶ The principle behind the Acts is to provide housing for the needy who are not necessarily government or institutional employees and to make some profit out of which further expansion of the housing industry may be possible. However, most of its completed houses are usually requisitioned by the government for the purpose of renting to public employees at subsidised rents. The Ministry of Public Works is also engaged in the construction of institutional housing. The Ministries responsible for Public Service and Local authorities allocate and distribute houses in the government housing pool. It is inevitable that this division of responsibilities for housing should lead to lack of co-ordination and to rivalries within the ministries concerned. The National Housing Corporation may wish to engage private architects and builders for economic reasons but the Ministry of Works is likely to insist on undertaking these tasks. The Corporation may wish to sell its houses to private buyers in order to fulfil its commercial objective but the Ministry of Public Service may earmark those houses for public employees. The Ministry of Health may make regulations of such high standards that both the National Housing Corporation and the Public Works Department are unable to afford the construction of houses to accord with the regulations. It may be pointed out that the building of residential houses in the urban centres of East Africa has remained under the governance of the British Building Regulations.

Section 233 of the Uganda Public Health Regulations provides:

"The certificate referred to in paragraph (5) of rule 232 of these Rules shall state that the structural design complies with either -

- (a) the requirements of British Code of Practice C.P. 114 (1957) General Series 'The Structural Use of Reinforced Concrete in Buildings';
- or
- (b) the detailed provisions of rule 232 of these Rules:

Provided that if the certificate shall certify that the design complies with the British Code of Practice set out above, local authority shall not require compliance with such provisions of rule 232 as require a better quality of design than the corresponding requirements of the said British Code of Practice."⁴⁷

Kenya revised its Building Regulations as recently as in 1968; but

Regulation 32 of the revised edition provides, inter alia, that:

"the use of any type of material or any method of mixing or preparing materials, which conforms with a British standard or a British Code of Practice or the appropriate Schedule to these Bye-laws prescribing the quality of material or standards of Workmanship shall, except where otherwise in these Bye-laws, be deemed to be sufficient compliance with the requirement of this Bye-law, if -

- (a) In the event of more than one such standard or code having been issued, the type of material or method used conforms with the latest edition and any published amendment thereto..."⁴⁸

The provision goes further to state that where the Kenya Regulations set a higher standard than that of the British Code the compliance with the latter shall be deemed to be sufficient. Britain is reputed to have the highest standard of building codes in the world.⁴⁹ Most of the builders and architects in East Africa who are responsible for the construction of low-income housing are likely to be people who did not go to University or to one of the professional schools for architects and engineers and yet they may be required to comply with regulation 15 of the Uganda Public Health Regulations which reads as follows:-

- "(a) In the case of steel columns having loads concentric to the axis and parallel therewith, the bending moment about each principal axis shall be calculated with proper regard for the eccentricity of the loading, and the maximum

compressive stress at the extreme fibre due to the axial load per square inch. The sum of these stresses at the extreme fibre shall not exceed F_2 where -

$$F_2 = f_c + 7.5 \left(1 - \frac{f_c}{f_1} \right) \left(1 - 0.002 \frac{l}{r} \right) \text{ and}$$

F_1 = the working stress per square inch specified in paragraph (9) (b) hereof

F_c = the total load on the column in tons divided by the cross-sectional area of the column in square inches; and

$\frac{l}{r}$ = the ratio of effective column length to the least radius of gyration."⁵⁰

In rejecting the use of local materials for the 'new' Mulago Hospital and recommending the adoption of the United Kingdom building regulations, Rees Phillips observed that local materials were poor in quality and quantity and that the tropics needed an abnormal degree of suspension which required the use of steel framing and that in any case if the hospital was to cater for all people it had "to be up to the standards at present accepted in the United Kingdom and equipped with modern conveniences."⁵¹ The latest research findings have tended to contradict this opinion about the use of local materials and in any event it should be appreciated that the raw materials from which British steel and other building materials are manufactured are often imported from the tropical countries including East Africa.⁵²

While conceding that quality and quantity are standards to be taken into account in making building regulations, it is submitted that merit in design is a matter of opinion. The same designs may not suit different sites and localities and it is therefore impossible to lay down any rules of general application. A design should not be rejected simply because it is new and different. The choice, wishes and needs of both the users and developers should be paramount in considering design. There has been a stifling of initiative and experimentation in design and building by a

strict adherence to the British Building Code in East Africa. One consequence of this has been that a large section of the urban population continue to settle outside the urban jurisdiction where they can live in conditions commensurate with their means of income and level of initiative. However, this preference will create more problems when these areas come to be incorporated in the present urban centres since the unplanned developments there are unlikely to blend with the planned schemes of the latter.⁵³ It is important that building codes in East Africa be modified to make it easier for developers to resort to the use of local materials and to reduce the costs of building which may in turn reduce rent and purchase prices currently demanded for urban housing. In this regard there have been several government-appointed committees and commissions to examine the existing regulations and make recommendations for change.⁵⁴ Some of these recommendations have been highly commended and they deserve examination. The Dow commission recommended the creation of three residential zones in urban centres. The first would conform to the present building regulations and would be known as the zones of high constructional standards. The second would consist of areas in which building regulations are modified so as to make cheaper building possible. The third would be composed of zones in which there would be little regulation of building standards beyond the requirements of health and safety. The greatest criticism against this type of zoning is that it simply recognises the present status quo of the existing high, medium and low housing zones. The only merit in it would seem that the government would be required to spend money in the development of the latter zone and have a measure of control in such development.⁵⁵ A more realistic view has been that the third category of zoning recommended by the Dow Commission be regarded as an area of temporary housing. It is to be permitted on the understanding that whenever the financial position of the country improves the houses will be gradually replaced with permanent or

semi-permanent buildings allowed in the first and second types of zoning.⁵⁶

The relaxation of the building regulations has its own dangers. In order to reduce costs to a minimum, existing urban building regulations relating to stability, fire protection and weather proofing might be waived and thus increase the danger of structural collapse and fire. The waiving of the building regulations may lead to the temporary housing degenerating into slums and the relaxation about overcrowding may lead to an influx of rural immigrants into these zones and make it difficult to control the population growth in urban centres. Against these problems four advantages are advanced. Firstly, the creation of temporary housing is the only short-term and practical way of providing low-cost housing quickly and on the scale required. Secondly, it permits the building of houses in indigenous traditional materials in urban and peri-urban areas as is the case in the Kiswahili areas of the coastal towns. Thirdly, the houses would be within the financial means of the low-income groups and rents would be kept at low levels. Fourthly, it would ease the acute shortage of urban housing and also relieve the pressure on such slender funds as the government and local authorities can make available for urban housing. In order to minimise the dangers and risks which have been mentioned, the new regulations for temporary housing should insist on reasonable spaces between buildings, privacy and sanitary facilities, the number of persons per building and fire control and prevention measures. There should be a requirement that temporary housing locations be visited and inspected by Health inspectors at prescribed frequencies. The inspectors should be obliged to make periodic reports to the controlling authority and the reports should be published. To avoid an influx of rural dwellers into these areas rural areas should be provided with adequate amenities and have opportunities for gainful employment. It should be a condition that the temporary houses be repaired at prescribed

intervals and in any event be replaced altogether within a specified period of time.⁵⁷

SECTION III : FINANCING URBAN DEVELOPMENT AND HOUSING.

The problem of finding sufficient funds to implement urban development schemes and housing programmes exists in every country whether developed or developing. But as between one country and another and between the developed and the developing countries the problem must be seen in relative terms. The developed countries are in a much better position. For many of them it would be possible, if they chose, to alter their financial priorities from prestigious and military expenditures to the provision of decent housing and amenities for each of their citizens, to find the necessary funds and save considerable amounts of surplus to give aid to the developing countries.⁵⁸ On the other hand, shortages in developing countries are acute on all fronts. The comparative incomes per capita of representative countries in the two worlds show the gulf that exists between developed and developing countries. In the league of the Nations' wealth the East African countries are to be found placed somewhere near the bottom.⁵⁹ It follows that money is one of the greatest problems faced by planners and developers of the urban areas.

The financial sources for urban development and housing in East Africa can be divided into four main categories, namely, Government, Municipal, Private and Foreign Loans. We have already given a brief description of the financial sources of local authorities.⁶⁰ A number of economists and tax experts have also examined the general tax law and practice of East Africa. Consequently, the discussion here will be confined to moneys and fiscal regulations that relate to urban planning and development in general and to housing in particular. The governments cannot be accused of not being conversant with the problem of finance in urban development and housing. In every government statement, document or plan relating to urban policies

the question of finance is always discussed. The only shortcoming has been lack of co-ordinated measures to be taken for the purposes of raising adequate money. Thus, Sessional Paper no.5 of 1966/67, of the Kenya Government states,

"The raising of sufficient finance is the one factor on which a sound housing programme must hinge. The main task before the Government is the mobilization of sufficient capital for an adequate public housing programme, while giving every encouragement to the private sector to play a full part.... Since the attainment of independence in December 1963, the housing programme has included more than 1,500 new housing units built with loans provided to local authorities through the Central Housing Board. This is in addition to housing built by employers and other organisations. The total sum expended since 1963 from development funds loaned through the Central Housing Board is more than £973,000."⁶¹

The statement went on to say that this sum would be increased substantially in the next phase of the housing programme to average about £1½ million per annum. It was the intention of the Government that the new loans would be spent on the construction of low and medium-cost housing and to support rural housing improvement. High-cost housing would be financed mainly through private investments and overseas sources. The Ugandan and Tanzanian policies follow the same principles as that of Kenya.⁶² A comparison between the housing targets of the National Development Plans and the actual amount of money available for development shows clearly that these government loans fall short of the required amounts.⁶³

It is pertinent therefore to examine the relative roles in urban development and housing to be played by both the public and private sectors. In economic terms the latter has tended to be discouraged, in the case of Tanzania by the socialist legislation and in Kenya and Uganda by political and social conditions.⁶⁴ It is possible, on a purely non-ideological basis, to encourage the use of private investment resources in house construction. The Soviet Union encourages its citizens to invest in the construction of

owner-occupier houses.⁶⁵ Such a policy would necessarily mean the modification of the system under which subsidies are given to government and institutional employees. We have seen that in both Kenya and Uganda, a government employee who is entitled to housing accommodation is allowed to occupy government quarters and at the same time permitted to construct residential buildings for which he charges economic rents for his benefit. It is possible to discourage this system by charging economic rents in which case government employees may be forced to build lown houses to live in since they would be *their* losing nothing in doing so.

The financing of the housing programme is perhaps the least appreciated in East Africa. Few studies have been made in the determination of the level of the rate of interest, the effect of taxation and the effect of subsidies.⁶⁶ The level of the interest rate is significant in the building industry because in the case of Long Term Loans the total repayments will contain a large element of interest and the higher the rate the larger the repayments become. Consequently, the level of the interest rate affects the incentive for investment either of the owner-occupier or of the private landlord. The same applies to taxation policy so that if housing investment is taxed more the investor is likely to look for other means in which to invest his money. Subsidies are granted to government and institutional employees irrespective of their level of income and this discourages the high-income groups of such employees from acquiring houses of their own.⁶⁷ At any rate, it is important that subsidies should be related to the distribution of the building costs and the distribution of income. Persons whose income is sufficient to contribute a reasonable percentage to the building costs should receive less subsidy than those who are less able. In this way, the money available will be concentrated more on the low-income groups of the urban population. It has been estimated that 80 per cent of the urban population can afford to

spend only 100 shillings every month on housing. Those who are able to buy or rent a standard house costing about 300 shillings per month form only 5 per cent.⁶⁸ Thus, it is the overwhelming majority of the population who are in the lower income groups and who cannot adequately cater for themselves in providing housing accommodation. On the other hand, it is the majority of the 5 per cent who are normally government employees, who are therefore amply subsidised in housing. The present Military government in Uganda declared that it would in future take action designed primarily to reduce building costs and to stimulate private housing enterprise and self-help efforts. However, its latest budgetary statements indicate that it has done the reverse. The 1972 Budget increased tax on building boards by $2\frac{1}{2}$ per cent, on floor and wall coverings by 40 per cent, on pipes and tubes and cement by 20 per cent and on angles, shapes and sections of iron steel falling by 10 per cent. In addition various service levies were imposed on construction, painting and decoration, plumbing, roofing and roofing repairs and these would be paid by the firms registered under the companies Act.⁶⁹ These are the same firms that were responsible for constructing housing in the private sector of the urban population and as a result of the budget their service charges were increased to take into account the new taxes. The budget came after a Five Year Plan in which those responsible for formulating housing policies had indicated that costs would be reduced. The budget was subsequently prepared by the Ministries of Economic Planning and Finance which were more concerned with the raising of revenue than with the promotion of housing as a community service. This case illustrates the lack of co-ordination in government departments and the effect of operating without an overall housing policy.⁷⁰

In their attempts to attract funds for urban housing, the governments have established loan giving corporations but because the majority of the people are poor the corporations have not been very successful in obtaining

enough capital from the public.^{71a} They have had to resort to borrowing from overseas at high rates of interest. The loans so obtained are usually repayable within short periods ranging from 5 to 10 years. The result is that the corporations decide to concentrate on the construction of houses for middle- and upper-income groups who can afford to provide the necessary commercial prices and rents required for the repayment of capital and interest. In 1970 the Uganda government authorised the National Insurance Corporation to extend loan facilities to housing. A subsidiary of the Corporation was formed for this purpose.⁷¹ The Corporation would only lend money to applicants who were engaged in the building of standard housing, that is suitable for the demands of the middle- and upper-income groups. The terms of its loan were that the applicant had to have land on which he was already constructing a house and that in any event, he would provide one-third of the money required for the complete construction of the house. It was contemplated that as soon as an application was accepted by the Corporation, the applicant would be able to negotiate for a loan with a bank of his choice to provide the extra money for the purchase of the land and the cost of a third of the construction. At its first two meetings the Board of the Corporation approved applications worth some 3,000,000 shillings. Of the applicants, a number had their own land and savings to meet the Corporation's requirements and these have proceeded to construct owner-occupier houses. The majority of the applicants were not so privileged and at the time of writing only a few of them have succeeded in obtaining the necessary extra money from the banks.⁷² The Corporation's loan terms have been very attractive in the sense that they extend to periods of up to 20 years at a low interest rate. Moreover such loan is so calculated as to ensure that it falls within the income capability of the applicant who is obliged to construct his house within 2 miles of an urban area. However, the Corporation's capital is very limited. In 1969 all major insurance

companies were nationalised and the decision meant that the Corporation had to take over motor insurance which is a hazardous risk. As a result most of its expenditure has been on motor insurance claims and this has left little capital to cover all the loan applications.⁷³

The Economic Survey of 1970 of Tanzania showed that not enough capital had flowed into the institutional funding corporations.⁷⁴ Progress in housing during the first year of the Plan had been disappointing. A sum of 14 million shillings of government grants was allocated to be used for the construction of 2,000 minimum houses at an estimated cost of 7,000 shillings per unit. However, for various reasons the smallest family units constructed cost no less than 13,000 shillings per unit. Only 1,060 "low-cost" houses were completed with the funds available. The national money-lending corporation was to implement the policy of encouraging private home ownership and to devote as much of its funds as possible to the provision of mortgages to individuals for the construction of medium- and high-cost houses. However, during 1969 only 84 individuals, ten of whom were non-Tanzanians, held sufficient capital or security to be able to take advantage of these facilities. On statistical basis, the Kenya position appears better than those of the other two countries. In 1968, the building and construction industry employed some 40,000 employees and by 1974 the figure was estimated to rise to 70,000. Moreover, by 1972 the country was importing less and less of the building materials and relying on local or locally manufactured materials. In 1968 the government set up the National Construction Corporation to sponsor Kenyan contractors to enter the construction field. The Corporation would give loans and guarantees or other means to such contractors and provide instruction in respect of accounting, estimating, planning, purchasing and other aspects of building technology. On average Kenya was spending more money on housing than any other East African country.⁷⁵ The establishment of the

Ministry of Housing as a separate department of state "has helped to provide the leadership needed at the national level for the formulation of a new and more progressive national policy on housing and for the co-ordination of the efforts of all concerned with housing..... But in view of the limited funds obtainable from the development budget annually, the building programme during this period has not been able to catch up with the demand."⁷⁶ Almost all the new home construction had been in Nairobi. Most of the houses completed were of the middle- and upper-income groups, yet the demand for low-income housing accounted for 70 per cent. The shortage in housing, estimated at 7,500 urban dwelling units per year is met by individual families themselves, who have squatted on public and private land and built whatever poor form of shelter was within their means, usually fashioned of mud, wattle, cardboard and tin. The government confessed of its inability to compile comprehensive data to give "an accurate picture of the social and health conditions resulting from these developments." In 1962 a partial survey in Nairobi revealed that some 100,000 persons were living in only 28,387 rooms with an occupancy average of four or more persons per room.⁷⁷

FOREIGN INVESTMENTS

The coming of independence in the early 1960s created a fear among foreign investors that the emerging nationalist governments would immediately indulge in wholesale nationalisation of foreign investments without compensation and the fear was followed by heavy withdrawals from banks and Building Societies.⁷⁸ In fact the nationalists did not begin to talk about nationalisation till the latter half of the 1960s but since independence there has been a gradual decline in the investments of the said institutions. The Arusha Declaration was followed in Tanzania by wholesale nationalisation of foreign investments in enterprises and

institutions described as the major means of production. In 1969 Uganda followed suit but in her case the government stated that it would nationalise only 60 per cent of the investments. There would be no immediate compensation which was supposed to be paid by the profits earned by the state through its holding of the 60 per cent.⁷⁹ Many of the banks, insurance companies and building societies in both countries closed business or failed to attract new capital or transferred their operations to Kenya. This was preceded by the dissolution of the East African Currency and the establishment in each country of a national currency with restriction on the transfer and movement of such currency to the neighbouring territories.⁸⁰

Whereas before East Africa had depended largely on investments from Britain and her Western allies, it began to look further afield for new sources of development capital. Countries like China, the Soviet Union and the East European Socialist states as well as the Scandinavian countries gradually began to replace the countries of the Western Block as new sources of investments. Only in Kenya did the latter remain entrenched.⁸¹ New sources of investment meant a changed emphasis in development schemes and projects. In several instances, projects begun under previous plans had to be abandoned or modified to conform to the terms and conditions of new loan and aid agreements. But even in Kenya foreign investors expressed similar fears. For instance, an influential journal circulating among businessmen of the Western countries who had hitherto invested into Kenya published an article in which it was stated that:

"In future, foreign investors cannot to the same extent count on the partnership of experienced and business-minded Asians, as has been so far the case. Considering the lack of entrepreneur-minded Africans this new situation has a negative effect on the investment climate."⁸²

The article prompted a response from a spokesman of the Kenya Government

whose views were later published in the same journal:

"Foreign investors should be in a better position in the future by having Kenyans as partners in business, because the latter have a sense of belonging to Kenya and hence constitute some form of security, the tendency of which is to reduce risk. An entrepreneurial class is rapidly emerging in Kenya and what would appear as a gap caused by emigration of the Asian business community will not take long to bridge."⁸³

A distinction must be made between foreign government loans and foreign private investments. Most government loans are not strictly commercial in the sense that the lender is looking for the most profitable return on his investment. Marris has said that this kind of loan is part of a development strategy, where the lenders' aim is to promote economic growth as efficiently as he can, rather than to make the safest or largest profit. It should not be imagined however that all the foreign states which give aid are motivated by philanthropic reasons or the mere desire to see the donee strengthen its economy. Among their objectives may be to found markets for their own products or military bases or to enhance their political standing in international affairs.⁸⁴ Often this kind of loan is tied to specific projects under conditions that leave little room for the administrators in the donee country to direct it to development as envisaged in their national plans. Foreign private investors on the other hand, are motivated by profit. They will only invest their money if the political climate in the receiving country is conducive to profit-making and if the schemes in which they invest are feasible and can yield large profits in the shortest time possible. They will insist on adequate facilities such as labour, security and the technical ability of those who will be using and controlling their investments. In many cases they will insist that such facilities be their own creation or choosing. It has been observed that British firms in Kenya borrow money locally and then invest

it. They borrow from the Kenya Government and from private banks and institutions. It has been estimated that these firms borrow as much as four times from local funds as they bring into the country. Moreover, unlike most other foreign firms, British firms are only 17.6 per cent locally controlled compared to much greater percentages for firms from other countries.⁸⁵ Expressing his disappointment in foreign investors, President Nyerere of Tanzania has said,

"Private investment was similarly disappointing; even when statutory assurance was given to foreign investors to export their profits, investors wanted immediate returns and they were therefore reluctant to invest in Tanzania where they had to establish the necessary economic infrastructures and train local African personnel before making profits."⁸⁶

Mohiddin has also observed that the realities of the Cold War and of international capitalism caught up with Tanzania. The amount of aid Tanzania received from all contemplated sources did not measure up to her expectations.⁸⁷

One of the most revealing survey was carried out by Gervers in the financing of large scale enterprise in Uganda.⁸⁸ His findings indicated that businessmen were finding it increasingly difficult to obtain funds from commercial banks. When asked whether they had failed to obtain funds from their banks since 1960, 28 per cent of the businessmen answered in the affirmative and the majority stated that they had been refused during the previous two years. The majority also stated that their overdraft arrangements were less than what they requested. More than 35 per cent of those interviewed stated that they had sought external funds and failed to obtain any. All this had caused all of them to postpone planned capital expenditure which they would otherwise have undertaken. Gervers also examined the terms that the banks were insisting on as conditions for giving loans and came to the conclusion that the security requirements

did not justify the low overdrafts the banks were permitting. 72 per cent of the people he interviewed were getting mortgages amounting to less than 60 per cent of the securities pledged and many of them felt that the banks were demanding excessive securities.⁸⁹ The banks' explanation was that they could not be liberal in their mortgage terms because of land speculation. The unavailability of long term funds from banks emphasises the need for alternative sources of long term finance. Among these may be mentioned the following: Development Corporations, Insurance Companies, hire purchase companies, moneylenders and finance and development corporations.⁹⁰ Often there is little or no publicity about these financial institutions. They are usually slow in handling loan applications and require excessive details in project reports.⁹¹ In addition, repayment periods tend to be short and grace periods inadequate. Some of the Corporations such as Development Corporation and the Development Finance Corporation insist on equity participation, or alternatively on control over management policy of the scheme in which the money is to be invested and, businessmen dislike such arrangements.⁹² Insurance and hire purchase companies are often criticised for their high rates of interest and insistence on monthly payments of instalments. In some cases insurance companies insist that the borrower place his normal insurance business with them as a term of the loan agreement. One advantage of these companies however is that once given, the loans are not subjected to the uncertainties of annual reviews which commercial banks make.⁹³

The Commonwealth Development Corporation may be specifically mentioned as one of the 'foreign' firms which has extensive interests in East African housing and development programmes. In Uganda it has the largest share capital in the National Housing Corporation. Its involvement

has three distinct phases. It supports mortgage institutions for higher-income groups. It gives direct loans for high-income housing and more recently, it has become involved in middle-class income-group housing.⁹⁴ Tribe has described some of the activities the Corporation is engaged into in Kenya. The Housing Finance Company of Kenya is half owned by the Corporation and half by the Government, with the former providing the senior management personnel and the latter the chairman. The company is involved in the long-term mortgage finance for higher income group projects undertaken by the National Housing Corporation and the private sector under the auspices of United Housing Estates Limited and Anglo-Kenya Investments Limited.⁹⁵ It also extends its lending facilities to individuals wishing to construct houses in the range of £1200 to £2000 which might be described as middle-income group housing,⁹⁶ More recently the Commonwealth Development Corporation and the Nairobi City Council have agreed to co-operate in the development of an Eastern Extension to Nairobi. A letter from the Corporation showed that during 1971 it was committed to providing a revolving fund of £1.5 million to finance roads, services and housebuilding on a large site on the outskirts of Nairobi and that at the request of the Kenya Government it was planning and developing this scheme to provide housing to suit the pockets of skilled artisans, clerical workers and others who could not otherwise buy their own homes. It was also lending a further £3.5 million to Housing Finance Company of Kenya to enable it to provide mortgages for purchasers of these homes. Thus, the Corporation is interested not only in the planning and development of housing but also in providing funds for purchasing completed houses. According to a spokesman of the Corporation each loan is separately negotiated in relation to its circumstances and on a commercial basis. The Corporation's balance sheet during the period showed an average return on

investments net of tax of 7-7½ per cent.⁹⁷ The conclusion to be drawn from the discussion of private and public finance institutions is that some progress is being made towards the provision of housing for the upper- and middle-income groups; but even in this field the governments have yet to streamline the mortgage and lending legislation and to level up interest rates to enable more people within these groups to construct and acquire their own houses. The low-income groups seem to be avoided by most of these financial bodies.

LOW-INCOME GROUPS AND SELF-HELP

"Thus, the poorer the man and the more underdeveloped his society, the more likely he is to have the ability and the inclination to shape his own immediate environment, notwithstanding the fact that he may not be able to have the items of conspicuous expenditure he may long for... What he does build and where he chooses to build is more or less of his own creation."⁹⁸

The passage above has been quoted from Leaning because it indicates the dilemma facing the low-income groups that inhabit the slums and shanty towns of the East African urban areas. There is almost an official conspiracy against the urban poor. High sounding statements are often included in national plans to the effect that governments will assist these people to own houses of their own and find adequate accommodation. When the plans are subsequently implemented hardly a house whether for sale or renting comes within their financial means. Most of them, if not all, are too unsophisticated or insecure in their jobs and shelters to complain. Nor are they politically educated to demand political solutions to their housing problems. They therefore end up fending for themselves by squatting on undeveloped land whether public or private and devising methods of acquiring accommodation by the use of materials often rejected by the affluent.⁹⁹ Commenting on the Kenya Government's intention to ban the growing of food crops and the keeping of domestic animals in urban housing

estates, Tribe observes,

"Although the regulations referred to do have some basis in disease control, it must be clear that there is a certain bias against those in the low-income groups. To some extent this bias represents a similar pressure to that during the colonial period when Africans in urban areas were granted land occupation leases for only one year at a time, and were generally not welcomed in urban areas... There does appear to be a certain lack of sympathy amongst some senior personnel with the realities of the Kenya structure. First, some of the senior personnel involved in housing matters appear to have rather higher standards in mind than can be borne by the level of incomes in Kenya."¹⁰⁰

There can be little doubt that in relation to the East African elite the low-income groups and the average urban poor is at the same stage and regarded in the same light as the pre-independence Africans were from the viewpoint of Europeans and Asians. Since we have already discussed the latter relationship there may be no point in examining the former which is more or less identical. We shall therefore confine ourselves to what is being done or what can be done to assist the low-income groups.

Eminent experts have at various times put forward proposals for solving the housing problem of the low-income groups, particularly in the developing countries. Ways of reducing building costs have included the following: the reduction of the sizes of buildings, the adoption of lower standards of construction and fittings, the encouragement of self-help building by small loans and instruction in building techniques, the provision of basic units which would amount to skeleton houses with most of the finishes and fittings excluded, the construction of a nucleus unit providing a completed portion of the house and containing the essential accommodation in such a way as to enable the occupier to extend it whenever he can.¹⁰¹ These proposals appear feasible and if implemented would certainly be likely to produce the desired results. The main problem is one of implementation and of the will to do so on the part of the housing

authorities.

The United Nations Mission to Kenya on Housing made a number of recommendations to help solve the acute housing problems of the country.¹⁰² The first recommendation was the establishment, within the Ministry of Health and Housing, of a National Housing Authority. The mission's choice of the name was deliberate for they intended it to have as its main function the implementation of government housing policies throughout the Republic. The Mission visualised an authority with a dynamic leadership which would be foremost in formulating housing policies for the approval by the government and which would liaise with other departments to co-ordinate and bring to bear all the national resources directed to carrying out a full and well integrated housing programme. In addition the authority would determine and control its relationship with non-government institutions to foster and promote an ever increasing development of the private housing sector. The Kenya Government went a step further and in welcoming the recommendation created a separate department of Housing. In view of what has been said about the rest of East Africa there is reason to suggest that there should be a Ministry of Housing separate from other Ministries and departments of government. Such a Ministry would be solely responsible for all the housing policies related to the examination of present and future needs, building regulations of housing construction. While collaborating with other Ministries, institutions and the private sector concerned with housing, this Ministry would be the overall authority in housing, whether governmental, institutional or private. Housing concerns everybody in the country irrespective of whether or not they are employed by public authorities, private firms or unemployed and destitute.

In order to define more clearly the Ministry's aims and objectives as well as to determine the extent to which private individuals and firms

may go in providing housing facilities, there should be a Housing Act. The Act should give such details as how the number and quality of houses are to be determined each year, the duties and powers of the Minister of Housing, how loan facilities are to be established and utilised and how the private sector of the housing industry is to be operated and co-ordinated with the work of the Ministry. Housing should, like education and medicine, be declared a necessity for all the people and as in these two, it should be only in those cases where people are able to fend for themselves that the government relinquishes the responsibility of housing them. With an established Ministry of Housing it is possible to frame concrete plans intended to speed up the construction of housing and to concentrate on research projects intended to reduce the costs of housing. All the moneys which are currently granted to the various departments and institutions for housing would be controlled by the Ministry so as to avoid wastage and unnecessary expenditure. There should be a standing committee of the Cabinet consisting of the Minister of Housing as chairman and representatives of the Finance, Economic Development and Planning, Public Service, Regional Administrations, Industry and Works, Labour, Health, Social Services and Lands Departments, as members to review periodically the work and progress as well as the implications of the housing policies.¹⁰³ Local authorities and representatives of the private sector of the housing industry should be allowed maximum participation in the formulation and implementation of the housing programmes. The Minister may delegate his powers to local authorities particularly in the directing of housing investments and determining regulations for special areas provided that the Minister retains the overall supervisory powers and the final power to override the decisions of subordinate authorities.

The principle that all houses in the government housing pool and those constructed with public funds are saleable should be firmly established.¹⁰⁴

Two ways of doing this are suggested. The first is to initiate a tenant-purchase scheme whereby all government tenants are entitled to purchase the houses they occupy. The rent should be so calculated as to cover the evaluated purchase price over a number of years. It is unlikely that all the public servants will choose the houses they currently occupy as the houses they would like to own in the future. Consequently, the incumbent tenant should be given the first refusal and then the house should be put on the open market. Government tenants who are in occupation of houses they personally would not like to purchase should be given an option on other government houses which have not been selected by others and their present rents should be adjusted accordingly. It is inevitable that this scheme would be advantageous to public servants; however, for any houses constructed in the future or those which have not been chosen by the present tenants, members of the general public should be permitted to buy them on the open market. The scheme is intended to have two results. Firstly, the economic rent which is proposed would enable the government to expand its housing industry and especially in subsidising the low-income groups and, secondly, it would give an incentive and a cause for public servants to acquire their own houses. For instance, many of the public servants who are currently letting their own houses may be forced to terminate their tenants' leases and occupy the houses themselves thereby releasing government houses for the general public. The problem of rehousing the displaced tenants would be minimal since it has been observed that most of these houses are rented to employees of foreign missions, governmental institutions and companies, all of which can afford to find alternative accommodation. The tenant-purchase scheme should provide for prompt repossession in the event of default to pay the stipulated instalments. However, dismissal or retirement from government service should not be a cause for such repossession so long as the dismissed or retiring tenant

continues to pay his instalments. In the event of the tenant-purchaser wishing to resell the house he should be permitted to do so only according to conditions approved by the Minister of Housing. There should be other conditions to govern the sub-letting of a house under the tenant-purchase scheme regulations. The second method would be simply to state as a matter of principle that the government does not provide housing for its employees as of right. All government houses would be transferred to the Ministry of Housing and to local authorities and be made available for renting or selling. Public employees who are currently occupying these houses would be divided into two groups according to salaries. Those earning enough money to enable them acquire mortgages or pay economic rent would be treated accordingly. Those who earn less to do either would continue to be subsidised until such time as their salaries rose to the stipulated amount or cheaper accommodation was found for them in which case the houses they occupy would be placed on the open market for sale or renting.

Not all the urban dwellers will afford to pay the purchase instalments or the economic rents demanded for government houses whether standard or sub-standard. The relative incomes table for urban dwellers shown in the appendix bears this out.¹⁰⁵ Hitherto, the governments have been prepared to leave this sector of housing to self-help schemes and private developers. It is proposed that the new Ministry should be directly concerned with providing cheap accommodation to the low-income groups residing in urban centres. There is plenty of land around these centres. Some of this land can be taken over by the new Ministry to develop housing estates for these groups. The use of local materials and the construction of mass buildings are likely to reduce the costs considerably in order to cater for the majority of the residents who can only afford to pay 50 shillings a month in instalments or in rent. The terms and conditions proposed for the

standard and sub-standard housing will equally apply to this type of housing. The Ministry should aim at building family dwellings instead of bachelor units as has been the practice in the past.¹⁰⁶ The construction of cheap and simple houses is recommended for a number of reasons. In the first place, it will be a temporary measure to ease the present housing shortage. In the second place, it will enable the low-income groups to have land and houses of their own, instead of squatting on public or other people's land or living in the degrading servants' quarters attached to most standard houses of the middle- and upper-income groups. In the third place, it will enable the government to plan and develop standard and sub-standard housing without great pressure from the shelterless. In the fourth place, it would enable the government to clear and redevelop the slums and demolish obsolete buildings without having to cope with large numbers of people who occupy them. In the fifth place, since the government will be directly involved in the promotion of cheap housing, it will be possible to plan development in these areas and to control the rents of private landlords by competition. Tenants who have suffered under the speculative activities of private landlords may prefer to move into government houses and this may force the landlords to reduce or level up their rent demands. Sixthly, the system is likely to reduce the litigation that characterises squatting in the unplanned areas of the towns. Lastly, since the low-income groups will be staying in accommodation they can afford they are likely to save enough money and to invest it in the purchase of standard and sub-standard housing.

It is unlikely that the East African governments will in the foreseeable future be able to allocate funds for a large scale housing development. This means that a larger share of the housing needs will continue to be satisfied by the private sector of housing. It is proposed

that the government policy should extend to this sector by way of encouragement, control and supervision. The United Nations Manual on Self-Help Housing provides useful hints on the techniques of organising and carrying out self-help projects.¹⁰⁷ The United Nations Mission to Kenya illustrated how these techniques have actually been used in Nairobi.

"A self-help project consisting of 30 houses was started in Nairobi in May 1964 under the sponsorship of the Ministry of Health and Housing and the Nairobi Inter-Church Action Committee. Capital cost, excluding labour performed by the participants is estimated at £660 per unit; a comparable unit built by a private contractor would carry an estimated cost of £800 - a saving of £140."¹⁰⁸

The Mission noted that the participants who belonged to different occupations had an average income per family of 324 shillings per month. This shows clearly that none of the participants could have individually afforded the construction of one of the houses. Yet, after the self-help project it was calculated that each of the completed houses would cost 96 shillings in monthly repayments of capital and interest thus bringing it within the financial means of each of the participants.¹⁰⁹ On the basis of their analysis of successful self-help projects in other countries, the Mission noted that the percentage of self-help housing of various types ranged from 10 to 50 per cent of the annual government-encouraged urban housing programmes. Another system is to build what is known as core or nucleus house. Under this system, one room is built by skilled labour and the family, after moving into it, expands the house using self-help and independent contractors as time and funds allow. Most of the independent contractors would be other neighbours who might themselves be extending their own core houses in which event labour is exchanged for labour and any additional cost is on the necessary materials. The system would be more efficiently organised in the more populous areas than in sparsely populated areas where participants would be forced to travel long distances to and

from the building site. For this reason this type of self-help scheme cannot be a model for all areas. It is interesting to note that the traditional rural house construction in most East African villages has always followed this pattern of self-help schemes. Considering that co-operative movements have been popular with small farmers in agricultural areas and small traders in towns, it is reasonable to assume that if the governments created a law of co-operative housing and gave financial and technical aid to residents co-operative housing may equally become popular and successful.¹¹⁰

Some people have advocated traditional housing in some areas of the urban centres.¹¹¹ In spite of the recommendations made about standard, sub-standard and cheap housing there will still be a substantial number of urban residents left without homes either because they cannot afford any of the three types of housing or because there are not enough houses to go round. The idea that a traditional African house is primitive and unfit for human habitation is a colonial relic which fails to take into account the real situation in East African towns. The majority of residents within the present urban jurisdictions do actually live in this type of house. In 1968, only 35 per cent of urban dwellings in Dar es Salaam were of permanent construction. Most of the other dwellings were of non-permanent construction and many of these were swahili mud and stick houses costing between 2000 and 5000 shillings each. In Arusha, Bukoba and Moshi, formerly towns dominated by European settlers and now by a relatively wealthy African community, 55 to 70 per cent of the houses were of non-permanent construction. The same phenomenon may be observed elsewhere in East African urban areas.¹¹² The official view of those who are concerned with housing seems to be that these houses do not exist. They are usually regarded collectively as "illegal squatting" or "shanty towns" without any analysis of the conditions of those who live in them. It is submitted that

recognition of these houses will prompt the government and housing officials to lay basic amenities and to provide services like water supply, sanitation and roads in these locations. Further, the authorities might direct their attention to the improvement and development of new construction methods of the traditional house. It is amazing for example that the technique of cementing the floors of the traditional African huts that were built in the compounds of government mansions and lodges and in camps and of providing windows in the same was never extended to the houses in the so called "shanty" and "squatter" towns.¹¹³ The recognition of the traditional house becomes necessary when it is realised that to construct a house in an urban area governed by planning and building regulations takes considerable time. The land rent and cost of a right of occupancy are deterrents. They may be anything from 300 to 500 shillings a month and 30 to 100 shillings a year, respectively. Because of bureaucratic delays, it may take up to a year before an applicant is given permission to build a house. On the other hand, in squatter areas, he pays 100 shillings to "Mzee", 50 shillings urban house tax to the city authorities for the right of occupancy and to qualify for some urban services, and, within weeks begins to build himself a traditional house.¹¹⁴ It has been estimated that to build the smallest house permitted under present building regulations in Dar es Salaam even under the self-help scheme would cost a minimum of 18,000 shillings. It would be a small house of two to three rooms including sleeping and living accommodation. On the other hand, a large traditional swahili house built with local materials would cost about 3,429 shillings. Moreover, by adding extra materials such as cement, windows and connecting it to water and electricity and making allowance for drainage and sanitation the latter house would not only be made permanent but healthy to live in. The cost would increase to about 6370 shillings and this is less than half the cost of the

former house.¹¹⁵ There does not seem to be any exceptional reason why this type of house should not become a common feature in the East African urban areas. Leaning has argued that:

"The National Housing Corporation could greatly alleviate the housing situation by offering at cost and easy repayment terms over a period of time, building components and assemblies such as floor slabs and foundations, masonry, doors, windows, roof assemblies, pit latrines and septic tanks; Also good standard plans from which people could build."¹¹⁶

The notion that good health and **decent** living go hand in hand with high standard construction and the use of expensive materials is a myth that needs to be dispelled from the minds of those responsible for housing in East Africa. Protection is afforded by non-leaking roofs, impervious floors, cleanable surfaces, cross ventilation and properly constructed and maintained latrines. These can be provided equally in all types of houses whether standard, sub-standard, cheap housing, swahili or the traditional African hut. An East African can build himself a house for as little as 3,500 shillings, a Canadian cannot do it for less than 100,000 shillings. The difference is not that the African is unable to provide himself with a **decent** home but that the Canadian is faced with a different environment and neither should copy the other.¹¹⁷

SECTION IV: RATES AND RENTS:

PART A: RATES

It was noted earlier that one of the sources of revenue for local authorities is the system of imposing rates on land and properties within the boundaries of a local authority. This is an important source since in the case of big towns the total amount of rates collected can amount to as much as 40 per cent or more of the total revenue of the authority.¹¹⁸ The principle of rating is based on the notion that the local authority provides facilities, services, amenities and protection for the residents

and their properties, if any, such as water supply, cleaning and refuse collection and the maintenance of roads and streets for which local residents who benefit should pay.¹¹⁹ The basis of the rating system in Uganda for urban areas is the Urban Authorities Act as amended. Schedule 5 of the Act provides that,

"2.A board may, with the consent of the Minister, by notice in the Gazette, impose a rate on premises situate within the boundaries or limits of the town....

Provided

- (a) that the total sum raised in any one rating year on any premises by rates shall not exceed 2% of the rateable value of such premises;
- (b) any rate payer shall be at liberty to object to the Board as to the assessment of the rateable value of his own or any other premises within the town;
- (c) final appeal in all matters relating to the assessment of rateable value and rating may be made by a ratepayer to the High Court."¹²⁰

The rates are calculated on the gross value of the property. Originally gross value meant the rent at which premises might reasonably be expected to let, from year to year, if the occupier undertook to pay conservancy fees, water rates and any other rates and the owner undertook to bear the cost of repair, insurance or any other expenses necessary to maintain the premises in a state to command that rent. In 1948 the law was amended to allow the Board to base its valuation on full sale value of the property instead of its rental value. Although the amendment meant that the new emphasis would cost more to implement it nevertheless produced more satisfactory results.¹²¹ The Local Government (Rating) (Amendment) Act, 1969,¹²² introduced further amendment. The power of evaluation was taken away from the Board and vested in local authorities. The Minister was empowered not only to impose flat rates in some areas but also to exempt any area within an urban jurisdiction from paying any rates.¹²³ In valuating rates, 'premises' includes any land, buildings or structures of

any kind and any part thereof. Some properties are excluded from the rating system. These include the following: Premises in the personal occupation of the President, used exclusively for public worship, burial and crematorial purposes, laid out and used exclusively for the purpose of outdoor sport or recreation or designated as a public open space under any valid and subsisting scheme made under the Town and Country Planning Act and controlled in accordance with rules and regulations approved by the local authority.¹²⁴ The amendment stipulated that it would be the owner of premises who would be liable for payment of rates.

Each of the East African countries has its own rating system. In Uganda the original rates were levied on the capital values of both land and improvements with a rate of $1\frac{1}{2}$ per cent on the former and $\frac{1}{4}$ per cent on the latter. Under the previous law revaluation was undertaken every five years but the 1969 amendment changed this to three years or such longer period as the minister may subscribe by statutory instrument.¹²⁵ Kampala has its own valuation staff while the valuation of other towns in Uganda is undertaken by a special Government valuation unit. Thus the amendment which made local authorities "the valuation organs" has remained redundant. In Kenya valuation is based on a different principle. Rates are assessed according to the value of land irrespective of any improvements therein. The official view in Kenya has been that to limit valuation of rates to land encourages development. There has been no tangible evidence to support this view.¹²⁶ The values of land are assessed on the basis of average sale values of the land within an area over the period since the land was last valued. Each plot of land is surveyed and registered and the records of all sales that have taken place are collected and sent to the valuation office. From these records the standard land value per square foot is ascertained. There are occasions when, because of the nature of the use,

land has not been subject to any sales in which case the records of sale would not assist in the valuation. In such cases the land value is ascertained by deducting the replacement cost of the improvements from the total value.¹²⁷ Although the relevant Kenya law requires revaluation every five years in Nairobi it occurs every three years. Formerly, Tanganyika had one of the simplest rating systems, namely, a house tax.¹²⁸ In 1955 it changed to the Kenya system of charging rates for the unimproved land values. Since independence the law has permitted the levying of rates on improvements expended on the land but this law is rarely resorted to.¹²⁹ The levying of this special tax is subject to the approval of the Minister and the official opinion has been that to levy it would discourage building. Moreover, since the Arusha Declaration and the acquisition of buildings legislation it has been extremely difficult to assess the value of land in the urban centres of Tanganyika. We have noted that the Canadian team which produced the Dar es Salaam Master Plan went to great lengths in analysing every topic that related to planning and development; but when it came to describing the value of land in Dar es Salaam they simply stated,

"Because of the land tenure system, i.e., rights of occupancy and Government leasehold, land values are difficult to establish in Tanzania. Also, because of the tenure system, land values do not have the same significance as in other countries of the world. For these reasons, detailed studies into land values in Dar es Salaam were not undertaken in the present study."¹³⁰

Despite the Team's difficulty, rates are levied by urban authorities subject to the approval of the Minister. In fact Tanganyika imposes higher rates than the other two countries. For instance the rates in Dar es Salaam were at 2.6 per cent while other towns levied rates ranging from 2.5 to 3.5 per cent. Revaluation is every five years but this is supplemented annually by the assessments made by the valuation unit of the Ministry responsible for Lands and Surveys.¹³¹ In addition to the site value tax, there is also

imposed an urban house tax. All persons who occupy houses located on sites on which the owners do not pay property rates and those sites are within the urban jurisdiction are obliged to pay house tax. This particular tax reaches the numerous squatters on government land and on land owned by the urban authorities and parastatal bodies. The tax varies from 20 shillings to 300 shillings depending on the type of the authority and the character of the location. In smaller urban centres, no site value rates are charged but instead there is an urban house tax on all buildings, levied as a percentage of annual rental value which is defined as gross rental value less 10 per cent. These taxes are set locally by local assessment committees subject to the approval of the Minister. They are revalued every three years. In Zanzibar property rates are assessed as 10 per cent on annual gross value. There are no rates levied on indigenous housing and this means that about two thirds of the urban population are completely exempt from rates. There are very few expert valuation staff and a simplified system of rating was devised. When property is rented, the actual gross rent is taken as the basis. When the property is occupied by the owner 5 per cent of the capital value of the property is taken as the rental figure. Revaluation is not frequent. In 1961, there was a complete revaluation undertaken and it was the first in 25 years.¹³²

A number of points may be made in connection with the rating system in East Africa. Only the three capitals have their own valuation officers. The other big towns depend on the government valuation units the members of which do not necessarily live in the area and are in most cases ignorant of the current land values. Therefore errors in under valuation or over valuation are frequent.¹³³ The smaller towns and the peri-urban areas are usually forced to charge flat rates for lack of adequate valuation. But even in the cities and big towns where there is periodic rating, the

authorities are faced with the problem of enforcement. In some areas the ownership and occupation of land is such that it is not easy to locate the people liable to pay the rates. The law does not permit the seizure and sale of real property for the nonpayment of tax including rates. There is therefore reason for suggesting that the law should be altered to make such seizure possible. After all, it is permitted for other claims of civil debts.¹³⁴ The only remedy available to local authorities is to sue the defaulter. When identification of the defaulter is difficult the action may not yield the desired results. In J.P. Pandya v. The Kampala Municipal Council, 1957,¹³⁵ the appellant was a statutory tenant who had failed to make objections to the valuation court with the result that his name appeared in the valuation roll as liable to pay a rate based on the site value of 86,400 shillings. The appellant refused to pay the rates and the respondents sued him in the Magistrates' Court for the recovery thereof. The magistrate found that the appellant, as a statutory tenant, came within the definition of "owner" under section 3 of the Local Government (Rating) Ordinance. The appellant appealed against the decision of the magistrate. The appeal was allowed on the ground that a statutory tenant was not an "owner" within the meaning of section 3. Faced with the problem of enforcement the authorities have recently convinced the governments that the only way to get more money from the rates is to increase the percentages of the values to be levied. The governments have accepted the requests and all the rates which were cited as authorised by the various Acts have been increased from 3 to 7 per cent.¹³⁶

LAWYERS AND RATING

Because the sum to be recovered from ratepayers is often small, governments have not always taken the view that the litigating authority needs legal representation. Consequently, even when the authority has

identified the defaulter and brought him to court there is no guarantee that their case will be correctly filed and ably argued for them to recover the money, especially in those cases where the defaulter is represented by an advocate. Thus, in Executive Officer, Township Authority, Kampala v. Norman Godinho,¹³⁷ the local authority brought an action to recover rates on various premises owned by the defendant. The action was dismissed on the ground that,

"Since the procedure making the person liable to pay was defective, the defendant had to be given more opportunity to prove which of the plots are not owned or occupied by him."

Apparently, the authority thought that they had lost the case on substantive law and no further action was taken. Had they had adequate legal services they might have discovered that with the issuing of necessary notices and requiring discovery of documents during the process of litigation the case would not have been dismissed on this ground alone. There are intricate problems in the rating system which require the services of advocates. In Nveli Ltd. v. Municipal Council of Mombasa, 1969,¹³⁸ the appellant owned a large estate near Mombasa and having prepared it for development in sub-divisional units, the valuer appointed under the Valuation Rating Act valued the sub-divisional units separately. The appellant objected and the Valuation Court valued the whole estate as one unit. On appeal to a Magistrates' Court, the magistrate restored the original valuation. The appellant appealed to the High Court which reversed the decision of the Magistrate. The court held, inter alia, that public and private roads were not rateable property; that whether premises form one unit for rating purposes is a question of fact as had been held in an earlier case of Municipality of Mombasa v. Nveli Ltd., 1963,¹³⁹ -a case that the learned judge followed. On the facts of this particular case the judge concluded that the premises formed one unit for rating purposes and allowed the appeal.

The litigating authority would have had to be familiar with the arguments and reasons of the former case to be able to make legal submissions in the latter case. In Khoja Shia Ithna - Asheri Jainaat of Tabora v. Tabora Town Council, 1963,¹⁴⁰ the court had to consider whether the authority, unrepresented at the earlier hearing, should be permitted to appeal out of time. In Chester House Ltd. v. Nairobi City Council, 1964,¹⁴¹ the court was faced with the problem of whether a local council which had not been represented before a Valuation Court could be joined as respondents on appeal. In Line Retreads Ltd. v. The President of the Valuation Court, 1968,¹⁴² the appeal court found that there had been an error of law in the refusal by the respondents to hear an objection as to the investigation of the date on which the notice demanding payment had been received. In Arusha Town Council v. EASCO, 1966¹⁴³ the court rejected the assumption that the application of "comparative method" in assessing rates was an appropriate method for public-utility undertakings.¹⁴⁴ In Dar es Salaam Muslim Community v. Prince Aly Khan, 1959,¹⁴⁵ the question was whether land owned privately but used exclusively by vehicles and members of the public should be exempt from rates. In East African Ahmadiyya Muslim Mission v. Yampala M.C., 1959,¹⁴⁶ the question to be decided was whether a mosque that was incompletely erected could be regarded as a place of worship within the meaning of section 3(4) of the Local Government (Rating) Ordinance. These are some of the cases that illustrate the view advanced in this thesis that lawyers can play a positive role in urban planning and development. The law allows a ratepayer to challenge a valuation order imposing a specific rate on his property not only on the ground that the law was not properly followed but also on the ground that conditions precedent or subsequent have made the rate unequitable.¹⁴⁷ Yet, because many rate payers have no access to legal services, they do not avail themselves of these opportunities. In 1969, the Tanzanian Government stated that,

"During the plan the Valuation Division will concentrate on those aspects of its work that are connected with taxation, estate duty, stamp duty, local rate and land rent. These depend entirely on valuation of land and buildings. In order to expand valuation services and increase their effectiveness, especially in respect of revaluation of land and buildings, it is proposed to decentralise the present facilities concentrated in Dar es Salaam so that valuation can be undertaken in the regions also."¹⁴⁸

Since valuation bodies have often to collect and analyse evidence both written and oral it is important that they include lawyers on their membership.

PART B: THE LAW OF RENT CONTROL IN EAST AFRICA

The subject of rent control has always been ambivalent. The imposition of legal control on rent especially in poor countries as those of East Africa may mean that more people can afford to rent the available accommodation. On the other hand, where the housing industry depends largely on the private sector, rent control may reduce the incentive to build more houses and thus lead to an acute shortage of rentable houses. The shortage of houses may in turn lead to the escalation of rent increases regardless of whether or not there is rent control legislation.¹⁴⁹ It may be useful to put the problem of rents in its proper perspective by setting down relevant passages from the current East African National Development Plans: The Kenya Plan states,

"The Government recognises that an unsound rents policy can be harmful to investment in housing, and that rent levels should be determined mainly by forces of supply and demand. In the final analysis, the answer to high charges lies in getting more houses built. However, even when a shortage of housing exists, no enlightened administration can tolerate the exploitation of citizens through unjustified evictions and extortionate charges. The policy is to keep rent levels in Kenya under review and to impose some measure of control to prevent these abuses whilst ensuring that capital invested in housing yields profitable returns. To this end the Government will introduce a new bill into

Parliament to amend the existing Rent Restriction Act and to provide for the establishment of Rent Tribunals for residential properties to deal with complaints by tenants and landlords, as the courts are overburdened with normal work. Appeals will lie to the courts from the decisions of The Tribunals."¹⁵⁰

The Kenya policy followed the Report of a Working Party set up by the Minister of Commerce and Industry on Rent Control. It will be necessary for our purposes to examine the conclusions of the Report.¹⁵¹ The current Uganda Five Year Plan directs itself to the problem of rents in the following manner:

"The most evident effect of the rapid growth in demand for urban housing has been the escalation in rents which has taken place over recent years. It is reasonable to assume that rising rents have, in turn, provided some incentive for additional housing construction. However, due to various constraints, some of which are mentioned in this chapter, housing construction has not responded sufficiently to arrest the upward movement in rents. It is also quite likely that actual rent increases have been in excess of the level necessary to stimulate an appropriate expansion in the stock of housing. In an effort to mitigate the harmful effects of this trend on the cost of living of urban house tenants, particularly those in lower-income groups, Government will take the steps necessary to prevent rents from rising faster than the costs of land and construction. Any rent control policy will be exercised in a very cautious manner to ensure that it does not adversely affect new construction, thereby worsening the situation for all except the favoured few occupying rent-controlled dwellings."¹⁵²

The Uganda Government further stated that it would set up a price Advisory Committee to advise relevant Ministers on issues pertaining to determination of all statutory prices which would include rents. The Tanzanian Development Plan makes similar emphasis on rent control and has implemented a number of measures to that end by the enactment of the control of Buildings Legislation.¹⁵³ The analysis of the urban wages structure shows that very few people can afford to pay high rents for urban housing.¹⁵⁴

We have already referred to the Kenya Working Party on rent control.¹⁵⁵

It is proposed now to examine their findings and conclusions. The party first studied the history of rent control in Kenya. It then wrote memoranda to individuals and organised groups who had interest or a connection with the rent system. They interviewed both landlords and tenants and heard evidence, both written and oral, from various people and organisations. The resulting report is interesting in the sense that its findings, reasoning and views can be applied equally to other urban areas of East Africa. This is why we find it necessary to give a summary of the report. The Working Party recorded evidence and arguments without regard to their merit or validity. It listed the arguments put forward in favour of rent control as follows:-

- "1. Since the abolition in 1954 of the Rent Control Ordinance,¹⁵⁶ rents have gone up considerably and this has caused great hardships to tenants.
2. Some of the buildings are very old and the original cost of construction has been recovered, yet the landlords keep raising the rents without making any repairs whatsoever.
3. The small trader must be assisted by the Government. The bulk of his profits are taken by exorbitant rents; he will never be able to invest more or expand his business. His initiative suffers because as soon as he makes profit the landlord will immediately raise the rents to take away the profits.
4. The tenant needs protection because of his relatively weak financial position in comparison with the landlord. The latter can afford legal advice while the tenant is unable to do so in most cases
5. In the absence of rent control or any type of protective legislation, the tenant is at the mercy of the landlord without anywhere to appeal. He quits which is harmful if he has invested a lot of money in the business. It is fair to have some impartial body determining a 'fair' rent when a dispute arises.
6. The problem of sudden evictions without proper notices. Where there are no signed leases the landlord can evict the tenant for no apparent reason at all. In some cases where the landlord wants to evict, he suddenly raises rent and the tenant refuses to pay or falls in arrears and then is immediately served with a notice to quit. This can mean economic ruin to the tenant

7. Many landlords fail to make any repairs to their premises and the tenant is faced with a burden of redecorating the premises at his own expense. The costs of site value tax, electricity and water are also borne by the tenants in many cases. Such landlords are only interested in collecting rents.
8. The law at the moment whereby the landlord can levy distress without recourse to the courts and which enables the landlord to close the tenants' business appears to be one-sided and should be modified."

The arguments against rent control were equally plausible. These were as follows:

1. Rent control would have an adverse effect on the building industry. It would stifle new developments of property at a time when Kenya should be encouraging new developments of property. The construction of new buildings has slowed down considerably within the last few years and a country, at such a stage of development as Kenya, cannot afford to take this step.
2. The rents should be left to adjust themselves according to the law of supply and demand and must not be fixed artificially. Free enterprise should be allowed to play its role to the full.
3. Rent control is of advantage only to the tenant. If protection is given to the tenants, this will destroy their incentive and they will become used to false protection which can only be temporary.
4. The rents are not in reality too high at the moment and in many cases are at the level prevailing in 1958 and 1959 ... It must be remembered that the cost of repairs, labour, building materials and the general cost of living have all gone up.
5. Most of the tenants in Kenya are Asians and their past record does not merit protection because they have exported money out of the country, and many who had money refused to invest it in buildings because they had no confidence in the country. The landlords' case should be taken seriously because they have risked their capital and in some cases they have invested when there was economic and political uncertainty.
6. The administrative machinery which would be necessitated by rent control will prove to be unnecessary drain on Government revenue which Kenya cannot afford at the moment.
7. Rent control is impracticable unless accompanied by security of tenure and this sometimes leads to abuse such as illicit payment of premiums, payment of key money and good will and the exploitation of sub-tenants

by chief tenants. There are so many loopholes in rent control that it can be easily abused. No legislation for example can effectively prevent payment of key money to unscrupulous landlords.

8. The amount of time taken by the courts in the past in hearing cases on rent disputes was considerable and cases could sometimes drag on for years until the original objective was defeated."

Equally interesting were the proposals suggested for reform. On behalf of tenants it was recommended that there should be direct rent control imposed by law, statutory security of tenure and review of existing rents. It was also suggested that there should be some legal control on buildings generally or more control on some than others or control of old buildings and no control on new ones. The landlords suggested the enacting of a law that would take the following into account: fair amount of gross return in the region of 15-20 per cent since they borrowed at rates of 10-12 per cent of interest; when considering a fair rent, site value tax, cost of labour, maintenance costs, increase in cost of materials and insurance should all be taken into account. The value of the buildings should be the current market value and not the cost of original construction. Rents should be on a temporary basis so as not to retard building construction.

On the evidence received, the Working Party came to the conclusion that it would be wrong to apply rent control generally. They thought that in discriminate rent control would hinder further investment in building at a time when building activity was already at a low ebb. Many of the complaints of bad landlordism came from new people who had rushed to the towns for employment or business and who did not insist on written contracts of leases. This enabled landlords to exploit their ignorance. Having signed no leases, these tenants were unaware of their rights and obligations or those of the landlords. Many complainants were ignorant of the fact that the cost of living had risen and increases affected other commodities.

They complained because rent seemed to be the major item on their expenditure and income balance sheet. Nevertheless, the party felt that some type of control was necessary. They proposed the introduction of an Act which would prescribe implied terms of tenancy such as that the tenant would have quiet enjoyment, the landlord would not derogate from his grant and would be responsible for all repairs of roofs, main walls, main drains, electric wiring and structure renewals. The tenant would be responsible for internal repairs, decorations and fair wear and tear. In the event of a building being let as a dwelling there should be implied in the lease that it is fit for habitation and complies with the health regulations and bye-laws. The party also proposed that rent should be paid in advance but the landlord should be responsible for the payment of rates, taxes and similar outgoings unless the parties have agreed otherwise in writing. The Act should include a simple agreement form to guide both the landlord and the tenant. There should be created a tribunal for the purposes of hearing complaints from landlords and tenants. The Tribunal should be empowered to assess rents, vary letting conditions and to terminate or extend existing tenancies for periods not exceeding 12 months. It should also have power to demand information on rents and terms of tenancies. It should be able to award compensation for any loss incurred by a tenant on termination of a tenancy in respect of goodwill and improvements carried out by the tenant with the consent of the landlord during the term of the tenancy. The Tribunal should be able to award costs and impose penalties in cases of frivolous or vexatious applications. The Report suggested that the tribunal should preferably consist of a sole Arbitrator who should be either a lawyer or a valuer. He would be appointed by the Minister from a Panel selected on the joint advice of the chairman of the Kenya Law Society and the chairman of the Kenya Branch of the Institute

of Chartered Surveyors. An appeal would lie from the tribunal to an appellate tribunal presided over by a Magistrate who would be assisted by one or two qualified assessors. Lastly, the Report suggested the institution of Rent Books in Kenya and made proposals for the form and contents of a Rent Book. Many of the recommendations are based on the provisions of English Rent Control Legislation.¹⁵⁷ The Working Party of nine members was chaired by an advocate who had been trained in Britain and included three other advocates on its membership.¹⁵⁸

THE LAW AND RENT CONTROL.¹⁵⁹

There have been a number of judicial pronouncements on rent under the Rent Restriction Laws in East Africa. Under the Uganda Rent Restriction Ordinance, 1943, there was established a Rent Control Board for urban authorities. In Miscellaneous Appeal No.2 of 1946,¹⁶⁰ the High Court of Uganda had to decide whether in fixing the standard rent of a bungalow the Board had to take into account the increased capital costs of the building. The Court held that the Board should have done so. Reading the judgment of the court, Edwards, C.J., said,

"The Board should have argued thus 'had this house been erected in 1940 or 1941 we think, having regard to the rents of similar houses in the neighbourhood, that a reasonable rent would be shs. 300/-. But we know that this is a new house built in 1946. What then, shall we add to shs. 300/- having regard to the fact that this house must obviously have cost more to build than houses erected before 1st January, 1942?' That in my view is what the Legislature expected the Rent Board to do."

In Waljee Hirjee v. The Chairman of the Kampala Rent Board,¹⁶¹ Ainsley, J., reiterated the point that construction costs of the house must be taken into consideration when fixing rent. In Waljee Hirjee and Sons v. Varmali Ninji and Others,¹⁶² the High Court added another point which had to be examined before rent was fixed, namely, comparison with standard rents of

neighbouring premises. In City Council of Kampala v. Mukubira,¹⁶³ it was held that demand for rent after suit for possession has been filed does not act as estoppel. Similarly, in Machango v. Morjaria,¹⁶⁴ it was held that a statement contained in an application to a Rent Tribunal does not create estoppel. In these cases it was the landlord who succeeded in challenging the fixed rent determined by the Rent Control Boards. Thereafter landlords were able to determine the amount of rent to be charged according to their own judgment of what was fair and reasonable. Many tenants felt that they had no reasonable chance of success before Rent Tribunals and they had to try and obtain the best terms of tenancies when carrying out the preliminary negotiations with their landlords.¹⁶⁵

Occasionally, tenants of the middle- and upper-income groups have challenged amount of rent and conditions of their tenancies. In Lukwago v. Bawa Singh,¹⁶⁶ a mailo owner demolished the house of a Kibanja owner without giving notice or obtaining a court eviction order. The court held that the holder of the Kibanja was entitled to damages for trespass in accordance with the Busulu and Envujjo Law.¹⁶⁷ In Essaji v. Solanki,¹⁶⁸ it was held that even though the application papers to stay an eviction order were not properly completed, the application would be allowed. In Damani v. Ndarumcki,¹⁶⁹ it was held that the Rent Restriction Board had power to award arrears for rent for a period before the relevant Act came into operation; and in Sands v. Mutual Benefits Ltd,¹⁷⁰ where the question was whether premises let were a furnished dwelling house, it was held that the inclusion of a cooker and refrigerator as items of furniture were not substantial enough to make the house furnished. In Bahra v. Highland Industrial Garage,¹⁷¹ the Rent Tribunal ordered the respondents to give up possession of premises to the appellant landlord on the ground that the appellant required it to carry on his own business on the premises.

Thereafter the respondents applied to the Tribunal by a document described as a notice of motion for rescission of the order and alternatively for compensation on the grounds that the order had been induced by misrepresentation or concealment of material facts. The affidavit filed at the same time contained hearsay evidence, but it was made clear that the witnesses would be called. On the appellant's objection to the affidavit the Tribunal dismissed the application summarily and without hearing evidence. Thereupon the respondents applied for the orders of certiorari and mandamus. The Court held that there had been no hearing. Once prima facie valid grounds of complaint are put forward it is the duty of the Tribunal to hear and determine the application on its merits. As the law did not prescribe the procedure of how the tribunal would exercise its power to vary or rescind the order, it did not matter what form the complaint takes. On an application to vary or rescind, the Tribunal acts as a court of review and not as an appellate court. A Tribunal's power to rescind is a power coupled with a duty to act when valid grounds justifying the exercise of the power are proved. The regulation governing the Tribunal stipulated that,

"The Tribunal shall not be obliged to apply strictly all the legal rules of evidence under the Evidence Act, provided its practice and procedure are conformable with justice, equity and good conscience."¹⁷²

In Hassanali Rahemtulla Walji Hirji v. Jamal Pirbhai and Sons,¹⁷³ the landlord and tenant made an agreement under which the tenant would pay a higher premium in default of paying rent contrary to the Rent Restriction Ordinance. Later the tenant was in arrears of rent and the landlord sued for the recovery of the arrears plus the agreed premium. The suit was dismissed on the ground that the parties were in pari delicto.¹⁷⁴

Thus, a considerable number of the middle- and upper-income groups who rent private premises have sufficient knowledge and means to protect their interests as far as the payment of rent is concerned. Moreover, since

the majority of the middle- and upper-income groups are likely to be government or institutional employees residing in subsidised housing, it is the low-income groups who are likely to be affected by bad conditions of rented accommodation. These are the same people who are basically ignorant of their rights and who are financially incapable of challenging the unfairness in housing. The Rent Acts do not provide for security of tenure beyond enumerating the grounds upon which tenants may be evicted by their landlords. The East African courts have often attempted to ease the situation for poor tenants by inferring security of tenure by resorting to the use of judicial precedents as established under the English Law as illustrated by Desai v. Cooper,¹⁷⁵ Ali v. Champion Shoes,¹⁷⁶ Hatim v. Saley Alkhiagy,¹⁷⁷ and Ratwani v. Degarwala.¹⁷⁸ However, in the majority of cases the complainants do not know how to file cases; but even when they have done so, they may be caught by some act or transaction that occurred before litigation and of which they did not offer a challenge at the time. For instance, in Obiero v. Cuiyo and others,¹⁷⁹ the plaintiff was in 1968 registered under the Land Registration Act as proprietor of a piece of land and no incumbrances were noted on the register even though the land was occupied by tenants under customary law. In 1970, the plaintiff sued for possession of the land and the defendants admitted that they were in possession and claimed to be the owners under customary law and to have cultivated the land from time immemorial. They further alleged that the plaintiff's registration which was a first registration was obtained by fraud. The court held that even if fraud had been proved the plaintiff's title was indefeasible as it was a first registration. Secondly, since the title had been registered as free from incumbrances it was free from all interests and claims and; Thirdly, rights arising under customary law are not overriding interests. It is submitted that had the defendants

known about the procedure of registration of land they might have entered a caveat with the Registrar of Titles for the protection of their customary land rights.

Other suits have been between local authorities as landlords and tenants who are in occupation of local authorities' premises. Often the dispute is whether the tenant is occupying the land in accordance with the regulations in force of the local Plan. In Limbe Town Council v. Robert Hunter Kirkcaldy,¹⁸⁰ the Town Council, acting under the powers conferred upon it by section 29 of The Townships Ordinance to "make bye-laws for the good rule and government of the Township of Limbe", made the following bye-law:

"The Council may disapprove of any plans on the following grounds:- that the site of any proposed building on the plan is such that the erection of such building would contravene or affect detrimentally any town planning scheme."

The question for decision was whether the bye-law was intra vires and in accordance with the objects of the section, namely the good rule and government of the Township. It was held that the bye-law was neither unreasonable nor uncertain and therefore was intra vires and for the said objects. In Attorney-General v. Ivan Eruja Kafero Kambule,¹⁸¹ the public authority had no statutory powers of repair. It realigned and raised the road level to four feet. The works obstructed and interfered with the right of access to land adjoining. Business loss was incurred by a petrol station situated on the roadside. The proprietor sued the government in nuisance and loss of profits and the action was successful. In Lukubira v. Kampala City Council,¹⁸² the Council's lease contained a covenant not to sublet. The tenant assigned the lease to a sub-tenant but kept control of the premises by retaining the key to the premises. It was held that the assignment was a breach of condition although the assignor retained the

key to premises. In Mulla Ali Bin Ismail v. R.,¹⁸³ the Nairobi Municipality (Building) Bye-Laws prohibited the unauthorised use of a building, that is, allowing a building to be used otherwise than for the purpose for which it was constructed. The ground floor of this particular building was erected as shops and stores and let as such to the tenant. Later, the tenant used the stores as dwelling houses. He was notified by the building owner to cease using the stores as living quarters. The tenant ignored this notice. The owner was charged with allowing unauthorised user of the building contrary to Municipal bye-laws. Although he was acquitted on a different ground it was held that the change of user had been unlawful.

There are times when the liability of an occupier of urban premises to pay a sum of money to the local authority is based on the administrative powers of the authority and not on the landlord and tenant relationship. This occurred in the Municipal Council of Dar es Salaam v. Joao Franco Paes,¹⁸⁴ under the Upanga Area (Planning and Development) Ordinance,¹⁸⁵ the main object of which was to establish a committee to prepare and carry into effect a scheme for the planning and development of the Upanga area of Dar es Salaam. The Municipal Council of Dar es Salaam was required to construct new roads. By section 40(2) the Council was empowered to apportion the expenses incurred by it among, inter alia, the frontagers. Subsection 4 provided that the owner of any premises charged may within a limited time object to the proposals of the Council on limited grounds, the relevant one of this appeal being ground (d) which provided as follows:

"that the provisional apportionment is incorrect in some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage), in respect of the degree of the benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises."

Subsection 5 provided that the Council would consider all objections received

by it under subsection 4 and after consulting all persons whom it considered likely to be affected, would determine the same and "make such adjustments, if any, in the plans, sections, estimates and provisional apportionments or any of them as it may consider expedient". Apportionment was made according to the frontage of the respective premises without regard to the degree of benefit to be derived by any premises. The respondent objected that his premises did not front or adjoin the new road and that his premises would not derive any benefit from the new road. He did not appear at the Council's Highways and Works Committee meeting which heard his objection and dismissed it after considering it. He appealed to the High Court which decided that the apportionment should have been based on benefit to be derived from the new road and remitted the matter to the Council. The Council appealed to the Court of Appeal for Eastern Africa, as it then was. The appeal court held that as the Council was acting in its administrative capacity it did not have to take into account the degree of benefit to be derived when making the provisional apportionment and that no objection could be based on that ground. It further held that the Ordinance did not empower the High Court to interfere with administrative decisions of the Council except in respect of those matters to which objection could be made under section 41(4). The appeal was allowed.

With respect, it is questionable whether the Court of Appeal arrived at the correct decision. The respondent was being deprived of a financial interest and he was a "person affected" within the meaning of subsection 5 and the question whether he was a frontager or derived benefit from the new road had to be properly determined in accordance with the rules of natural justice. It is suggested that the correct views are to be found expressed in Chhaganlal v. Kericho Urban District Council,¹⁸⁶ and Singh v. Municipal Council of Nairobi,¹⁸⁷ to the effect that where the right of the individual is in issue the administrative body must act fairly and according to the

rules of natural justice. As to whether the High Court had power to interfere with the administrative action of the Council. The Court of Appeal for Eastern Africa has on more than one occasion said that the court has inherent jurisdiction to do so since

"These rules are so fundamental that it can be assumed that Parliament meant to have them apply; if it meant otherwise, it would have said so. The Court will either add these requirements when there is no reference in the statute or it will so interpret the written provisions of an Act that notice and an opportunity to be heard are held as implied in Parliament's language."¹⁸⁸

The findings of the Kenya Working Party on Rent Control suggest that regardless of Legislation the shortage of urban housing would always lead to exorbitant rents being demanded by unscrupulous landlords. However, the fact that a law is likely to be violated or evaded cannot be a valid ground for opposing the establishment of that law. If this were the case there would be no system of law at all since every rule of law is always at the risk of being violated or evaded by non-conformists. Since most laws in East Africa are codified, judges should not be expected to resort to English precedents in order to do justice to tenants who are denied security of tenure or charged unreasonable rents. It is suggested that these matters be covered by some legislative measure lest the judges forget to resort to judicial precedent. It is proposed that in addition to enacting the necessary law, all current rents chargeable should be registered with local authorities. A local authority Rent Committee should be established for the purposes of examining all the registered rents and determining their reasonableness. The Committee should also be responsible for fixing any future rent charges which must, in turn, be registered. It is to be noted that this kind of system exists with variations in the United Kingdom and there does not appear to be any reason why it cannot apply to East Africa.¹⁸⁹ The proposed Ministry of Housing should undertake

an intensive study and formulate a general policy and rules to govern the relationship between landlords and tenants and these rules should be enacted in an Act by the law-making body of the country. An appeal from a local Rent Committee should lie to a Rent Appeal Tribunal and therefrom to the High Court on points of law. It has been contended in the current Development Plans of East Africa that it is the costs of land and building materials which are responsible for the high rents in the region. Equally it can be argued that the escalation of prices of land and building materials are a direct result of the high rents expected from the construction of houses. Moreover, in view of the proposals made with regard to improving the housing situation, it should be possible to legislate for and control rent and security of tenure of leases without necessarily affecting construction and building materials costs.¹⁹⁰

CHAPTER EIGHT: THE LAWYER'S "BRIEF" IN URBAN PLANNING AND DEVELOPMENT

Section (a) : Resume

A number of topics were introduced and examined in the previous chapters. They ranged from urbanisation to the meaning, purpose and history of urban planning; from the infrastructures and organs of the urban agglomerations to the persons and professions involved in the planning process. The agencies, mechanics, notions, objectives and practices of planning and development were similarly noted and discussed. There were discussions about politics, economics, law, engineering, building, sociology, finance and administration. The general reader may wonder about the relevancy of some of these topics to urban planning law. Perhaps, he may not be the only one for some traditional planners are likely to regard the suggestion that lawyers have something positive to contribute to planning with scepticism. Equally, there are lawyers who are likely to reject several of the topics examined as pertaining to law generally and to planning law in particular. We have already discovered that in their treatment of the planning process, in writings, conferences and inquiries, the legal profession and the planning establishment tend to ignore each other.¹ The history of planning has indicated that generally speaking, lawyers regard planning as an instrument of interference with their clients' interests. Conversely, planners see law as an obstacle to effective planning. In his "Planning Law's Contribution To The Problems of An Urban Society" - a title that reflects the uneasy relationship between law and planning - Professor McAuslan has given four aspects of planning law which he thinks have helped prevent the creation of towns and cities which accord more closely with the British people's wishes. He has expressed the opinion that the four themes have contributed to urban problems rather than their solution:

"These are first, the great stress placed on property as the focus of legal attention; second, the constant increase in powers and discretion conferred on officials with few, if any relevant controls; third, the emphasis placed on formal procedures in certain parts of the decision-making process; and fourth, the complexity of the law. In a very real sense, the first theme - that of property - overshadows all the others"²

The attitude of the legal profession is thus shaped by the extent to which planning law affects individual rights in property rather than the general benefits to be derived by society. Indeed, McAuslan concedes that British planning law of the 1840s was regarded as synonymous with interference with property. The British land law reforms of the late nineteenth century and the first decades of the twentieth were concerned mainly with "freeing the land from the various fetters placed upon it by generations of conveyancers acting on behalf of the landed interests and so make the land freely available in the market. Any legislation which appeared to reimpose fetters, particularly of a public nature, however desirable from a social point of view, conflicted with the ideal of a free market in land, and was unwelcome to these lawyers. Thus, from the beginning of town planning law, the lawyer has been concerned to ensure that the rights of the owner of private property were adequately provided for, and that he was put to minimum inconvenience by the law and has paid less attention to the rights of others which could not be grounded in private property."³

However, the existence of each of the topics we have examined and its practical utility are in the final analysis designed and intended to affect the lives and well-being of a given community. No planner, regardless of his professional attitude, can deny that his plans or schemes have this precise effect. If it is conceded that planning affects the lives and well-being of a community, it must be equally conceded that in so far as those lives and well-being are expressed in terms of rights, interests, duties and

powers, they are the direct concern of the legal profession. No lawyer whether traditionalist or not can deny that his profession is directly concerned with the rights, interests, duties and powers of members of society. In every case, it is the people who live in the community planned for that experience the impact from an interplay and relationships between the said topics and the resulting activities. In analysing the planning process we are dealing with a subject that affects the rights, duties and obligations of the people and ultimately with a subject that makes special demands on our legal systems. To ignore these topics as being insufficiently legal to command our attention as lawyers would be as short sighted and naive as the attitude of some planners who show indifference to the law even though their planning powers are directly derived from it. While gathering information for this study, there were opportunities to interview a number of executive officers who are currently involved in the planning and development of East Africa. One such interview may illustrate this point. The interviewee happened to be the Director of a professional school. He was asked to describe the evolution of the policies which he is presently pursuing at his school. He stated that the Government decides what policy to follow and he and his colleagues simply implement it. On being pressed further, the officer revealed that the principles and details of the policy were thought out and formulated in his office with the assistance of his staff. They prepared a policy-document and submitted a copy to their minister who gave his approval. Later, the President of the Republic was invited to the school and introduced the policy in a public statement. The director himself wrote the Presidential speech incorporating the policy. The President who did not have the time to peruse the document before, came and read 'his' speech verbatim and thereafter the school began to implement the policy. In the interview the director

was asked whether anyone wishing to know the aims and objectives of the policy would be advised to study the views and attitudes of the director and his staff. He was emphatic in his rejection of such a proposal. He believed that he and his colleagues were civil servants and their job was to implement Government policy and not to initiate or question it. He was further asked whether a lawyer analysing the evolution of Government policy would be right in taking into account the fact that the policy had been originated and prepared by the director himself and his staff. The director thought that to do so would be avoiding the law-making processes as prescribed by the constitution, namely, the minister, the Government and the President and resorting instead to politics of tendering advice. In other words, the constitution provides that the Government shall formulate the policy of the country and one should confine his research into how the Government operates regardless of whether the policy was formulated elsewhere. The director was precise in his opinion. Any statement that implied that it was his views which appeared in the policy document and not those of the Government ministers would have no basis in law.⁴

By way of analogy, the director was asked what would be his attitude if in trying to understand the basis and rationality of the 'neighbour principle' propounded by Lord Atkin in Donoghue v. Stevenson,⁵ a lawyer directed his mind to the breakfast conversation the noble and learned Lord had with his daughters before writing his famous judgment. The story is told that Lord Atkin asked his daughters who they thought to be their neighbours in law and as a result of the answers they gave he proceeded to write his judgment. The director who is a traditional lawyer with considerable practical experience replied that such direction would be misconceived and the lawyer would be indulging in gossip and non-legal arguments. He did not seem to be impressed by the hypothesis that had Lord Atkin had no time to

talk to his daughters the legal profession might have been deprived the illustrations of the 'neighbour principle' as described by Lord Atkin's daughters. The argument must be that it was Lord Atkin who was the judge and whatever his daughters said was immaterial and should be ignored completely. On the other hand, our view is that to understand how Lord Atkin's mind worked it is important to appreciate external forces on that mind including his daughters especially in this particular case where their own views seem to have figured a great deal.⁶ The director's views accord with the traditions of the Civil Service in Britain and the countries of the Commonwealth which follow the British form of government administration. In law, the role of the civil servant is to tender advice to his political superiors and to implement approved policies. Anything else they may do is pretentious and has no basis in law notwithstanding that in reality ministers are sometimes servants of the Civil Service.⁷ The notion that to analyse the attitudes of the administrators responsible for government policies is to go outside the purview of legal principles is unrealistic since in the final analysis the rights, duties and powers of citizens are as much affected by the decisions and actions of those administrators as those of the relevant minister or organ constitutionally responsible.⁸

In this concluding chapter an attempt is made to synthesize the various views put forward on each topic with regard to the role of lawyers in urban planning and development. There have been endeavours to incorporate proposals for reform in discussing the contents of each chapter. Any lack of depth and practicability in some of these proposals may be explained in terms, partly of the nature of this study and partly on the fact that urban planning law in the context of East Africa is a relatively novel idea. The only redeeming feature in such cases may be the clarity of conviction preceding every proposal; and, in so far as the proposals may form the

basis of criticism and debate of the present planning law in East Africa they will have achieved one of their objectives.

Of the three East African countries only Tanzania has effected the policy of public ownership of land and commercial buildings. In both Kenya and Uganda the existence of private ownership of land in urban centres has been associated with the problems of providing social services and orderly planning and development.⁹ Yet, development in the two countries as in Tanzania is carried out by the government through appropriate public bodies. The multiplicity of land tenures in the two countries complicates administration and slows down planning and development. There does not seem to be any ideological reason why both Kenya and Uganda should not follow the example of Tanzania in declaring all land to be in public ownership. Professor James has stated that the philosophical foundation of the Tanzanian land policy is partly rooted in traditional African beliefs and attitudes and partly based on the notion that security of tenure must depend on the continued use of land.¹⁰ The first part of James's contention may be criticised and rejected on the ground that the policy is a consequence of Tanzanian Government's decision to pursue a national socialist policy in planning and development rather than a desire to revive the so-called traditional African attitude to land ownership. It has been argued that there was not one but several African attitudes to land, depending on the structure of the community and the region it belonged.¹¹ The Tanzanian policy is related to the socialist ideas as expressed in documents like the Arusha Declaration, Self-Reliance and the Ujamaa Villages principle. Admittedly, in advocating for the policy of public ownership the Tanzanian Government found it politically expedient to explain it in terms of traditional African attitudes to land. The exercise was intended to legitimise rather than rationalise the policy. The Tanzanian leaders, and

especially the President, have been shown as dedicated to what has been described as African Socialism.¹²

In opting for public ownership of land the control necessary would be limited to the use of land. Greater economic development may be achieved by land use regulations, assuming that the other agencies of planning and development exist and are usefully employed. On the other hand, if private ownership of land is permitted, a government desiring greater and controlled economic productivity is likely to meet with problems. In order to achieve its goals it may be forced to issue land regulations restricting sale and use of land as well as imposing taxation on such sale and use. In developing countries like Kenya and Uganda, the regulations are likely to discourage private investors who come mainly from foreign countries.¹³ With the exception of mailo land owners in Buganda and recently the African proprietors who have replaced white settlers in Kenya, private ownership of land has not had the same sanctity as is to be found in countries whose legal systems permit and entrench it. The majority of the population particularly in rural areas to which the urban boundaries are being pushed, continue to regard land as unsaleable and to be used only for shelter, the growing of food crops and the grazing of cattle.¹⁴ Consequently, it is submitted that the declaration of public ownership of land is likely to be more acceptable to the people as a whole than if private ownership was fully entrenched in the traditional attitudes of those people. The removal of land from private ownership to public ownership is necessary to give the biggest developer in East Africa, namely, the government and its agencies, the basic commodity in development.¹⁵ Whether public ownership is accepted as a principle or not it is contended that the first brief of East African lawyers must be the reform and rationalisation of the existing land law.

It has been observed that East Africa lacks the administrative machinery capable of formulating, co-ordinating and directing the policies of planning and development.¹⁶ Both the existing machinery and the planners have not shown much imagination in producing plans for the region designed to suit local conditions and circumstances. The large number of public bodies which are directly or indirectly concerned with planning and housing inevitably leads to lack of co-ordination and rivalry among them.¹⁷ There is an urgent need to rationalise the administration and infrastructures of planning and development. It is suggested that in this field too there should be greater use of the legal profession than has hitherto been the case. Planners and administrators must cease relying on their natural intuition to renovate and apply planning codes from other countries. There has been a tendency in the past for 'lay' administrators to copy the drafting codes and phraseology of the United Kingdom and other developed countries without appreciating the relevancy of these to local conditions and circumstances.¹⁸ Quite often the system simply reinforces the power of those with wealth and the sophistication to use it without assisting the needy and the ignorant. A Tanzanian code intended to control the prices of certain commodities throughout the Republic stated that notice may be communicated to the public "or person or persons by whom it is intended to be obeyed by notice in the Gazette, by newspapers, in the area where such persons reside, by public notice in the area, or by letter addressed to any concerned individual. Production in court of the Gazette, notice, the newspaper, advertisement, or other notice, shall be prima facie evidence without further proof of the contents of the notice, and of its being communicated to the said person or persons, until the contrary is shown."¹⁹ Yet, recent research studies have shown that the overwhelming population

have no access to these methods of communication. Of those who did, almost all of them were influential members of their respective communities. In a rural sample in Uganda involving 99 influential members of the location and 317 others only 63 per cent of the former read any newspaper at least once a week. The percentage of the latter group was only 37 per cent. There is therefore a great need to localise these laws and to simplify the procedural rules. For instance, with respect to the Tanzanian rule of communicating commodity prices it would have been more realistic to provide simply that the chief of the area shall have the responsibility of communicating such information to the person or persons concerned by means of written notices in the Kiswahili language.²⁰ Legal education and the legal profession have been particularly useful in producing experts who have special knowledge and techniques of drafting legislation, rules and regulations establishing public organs as well as defining and limiting their functions, duties, powers and relationships with one another and members of the general public. The importance of bringing the clear statement of the law to the people needs to be emphasised especially when it is realised that at times many of them are likely to be misled deliberately or otherwise by officials whether elected or appointed. This phenomenon may be illustrated by the case of Republic v. Kasella Bantu.²¹ Kasella Bantu, a member of the National Assembly, addressed a public meeting at which he stated that he would be introducing a bill in Parliament to empower people to execute cattle thieves summarily. Subsequent to this statement eleven persons were tried and convicted of murder of a suspected cattle thief. Kasella Bantu was accused of incitement to murder. At his trial a witness who attended the meeting gave evidence that:

"I would not entertain any doubt that what the accused No.1 (Kasella Bantu) said was law. In an area of the country we do not follow the law in the books. We just

do what we are told. Whatever the leaders say, we take to be the law."²²

Kasella Bantu was acquitted of the charge but the eleven convicted persons were sentenced to death.

The Secretary of the Chilean Ministry of Justice in the Allende Government once pointed out the contradiction between Chile's legal system and the new social reality being fostered by the socialist government of the late President Allende and discussed the paradox and problems of a government committed to improving the life of the working class while operating within legal channels designed by the bourgeoisie to maintain itself in power.²³ The same could be said of the East African countries. The region's governments have let it be known that they are committed to a national policy of economic development primarily for raising the living standards of the masses of the population and yet the law has remained essentially that designed for the protection of the privileged urban communities whether these be the colonial minorities or the post-independence African elite. If law is the vehicle of development and social change it is imperative that the legal profession in East Africa be called upon to ensure that the vehicle is so structured and maintained for the purposes of development and social change as envisaged in government policies. Sawyerr has argued that in its social setting the law must do three things at the same time.

"In the first place it must reflect the values of the society it serves - it must be firmly planted in the soil if it is not to be largely irrelevant to the lives of the people and thus ignored However, the law cannot content itself merely with accommodating social changes after they have occurred. It must take account of the fact of change. A second function of law in society, therefore, must be to help in the creation of conditions, so far as this is possible, in which desirable social developments can the more readily take place our attention has thus far been concentrated on the more or less passive functions of the law in reflecting or creating conditions for

social evolution. But in a period of such fundamental changes and accelerated development perhaps the law must assume a more positive role in some spheres, must seek to influence the direction of development In this guise the machinery of the law is used to effect socially desirable policy objectives." 24

The opinions expressed by both the Secretary and Sawyerr go further than the usual attitude of lawyers that the function of the legal profession is to discover the law as it is and apply it to a given fact - situation and that it is not the function of the lawyer to anticipate the results implied by a social policy. It is said that the latter role falls on the abilities of politicians and economists. But once law is regarded as an instrument of change and further as intended to promote and direct certain aspects of that change it is inevitable that those responsible for moulding the rules of law must consider and collate the principles and particulars of that change whether it be political, economic or social. It is therefore argued that as part of the lawyer's brief in planning and development, there should be an effort not only to relate the rules of law to the prevailing social and economic policies of change but also to do it in such a way that the law steers and directs those policies to the desired change. In this regard it is apt to re-echo the words of the former Dean of the Faculty of Law at Dar es Salaam University when he said,

"Much has been written about the revolution which is - or is about to be - taking place in the legal systems of African states. It is an appreciation of the proportions of that revolution, and of the demands and opportunities which must accompany it, that has led the Faculty of Law of the University of East Africa, Dar es Salaam, to insist from its inception that its students - the future leaders of the benches, bars and governments of East Africa - should be exposed to every relevant viewpoint, all probable alternatives, any appropriate solution. They should be encouraged to assess critically rather than accept automatically every rule and institution, which have come into the present legal systems either from the traditions of the local past or from the hands of the expatriate administrators But the real revolution in Africa

today is far greater than this: it is a social revolution, reaching down into the very basis of society. Education, health, industry, commerce: these are the new factors, and it is the revolution through which they are going that is creating the demand for revolution in law."²⁵

Among the graduates of the Faculty there have been lawyers who have been absorbed into the system of public administration in East Africa. One of these has expressed his views on law reform in the Uganda Law Focus.²⁶

He observes that almost every field of law in Uganda, apart from some aspects of the criminal law, is based on the Common Law or statutory law of England as it was in 1902. The Common Law was developed by the English courts to meet the peculiar circumstances of England. In the course of time, statutes have been passed to replace the case law. As a result, the law in England has since advanced to meet the needs of the English people whereas in Uganda we still regulate the affairs of our people on principles devised half a century ago for England. In promoting Law Reform we have to be careful not to borrow wholesale the recent legislation in England. It must be accepted that the people in Uganda have a well-developed civilisation and this in many respects differs from that of England. The only way to avoid the temptation of re-adopting modern English law is to carry out a comprehensive research programme to identify and re-state the customary law of Uganda.²⁷ He further revealed that the Centre was currently undertaking research into Hire Purchase, Land Tenure and Compensation and Restitution under the existing law. The writer is the Director of the Law Development Centre and as may be imagined his influence in the field of legal reform of the country is quite considerable. His attitude appears to confirm the statement of the Dean of the Faculty of Law at Dar es Salaam as to what their teaching methods were designed to achieve. Unfortunately, the director further notes that almost all the

the research projects undertaken at the Centre are under the control or direction of expatriate staff. Of late, the director has been making trips abroad to recruit staff for research purposes and most of these seem to come from the United States of America. In view of what has been said about the work and methods of expatriate scholars and advisers it is perhaps unfortunate that the Dean and the staff at Dar es Salaam did not emphasize the caution of relying too heavily on expatriates to do the research of East Africa. The handbook of the centre shows that there is a significant number of local lawyers employed at the centre who could undertake the bulk of this research. One of the neo-colonialist dangers facing African bureaucrats today is the notion that graduates of the Western Universities are better equipped and qualified to do research into our domestic laws than our own countrymen and women who may have studied at the same Universities and who may in many respects be better qualified to understand and collate information obtained from their own people whose languages they may understand. The neo-colonial attitude coupled with the fact that often the expatriate researcher is supported by funds from the country of origin has tended to distort our research priorities.²⁸

Hitherto planners have insisted on keeping high standards of urban development. The policy has tended to drive many developers in the lower-income groups to the peri-urban areas where they have engaged in unplanned and uncontrolled development. It is not often realised that the latter kind of development has social and economic effects on the former since the slum dwellers and the health hazards of the shanty towns are so close as to intermingle with the urban life of the highly planned and developed areas. Moreover, sooner or later, the city has to be extended to accommodate the growing population in which event the city planner is faced with the removal of slum dwellings and the clearance of shanty towns which he

originally helped to create. The exercises will inevitably involve the expenditure of part of the money which may have been earmarked for some other development. Sociologists have observed that there is no simple solution to the problems of slum dwellings. Southall has, for instance, noted that the slum dwellers of Kampala

"feel under stress because of their mistrust and fear of government which they see in the form of police spies, tax collectors and urban planners intent on destroying their houses and driving them out."²⁹

Urban authorities need to show greater interest in the needs and problems of these areas. They must show from an early stage that they are concerned about the plight of the people who live in them for

"The idea of mutual social responsibility presupposes a relationship between society, its members and the state. It suggests that the state is a means by which people collectively impose on individual members behaviour that is more socially constructive than that which each could impose on himself."³⁰

The shanty town dwellers cannot feel that they have any mutual social responsibility when they are left to fend for themselves and when the only time they come face to face with their government is when the latter's agents come to collect taxes, detect crime and demolish their houses. Lawyers must be given a role to play in these areas. This role is seen as two-fold. Firstly, it is suggested that lawyers should be employed to investigate the problems of ownership, use and control of land in slum and shanty areas and also to discover the legal needs and problems of the inhabitants. Only in this way will the planning authorities have sufficient information to examine future planning prospects of these areas and to include them in the urban plans and schemes. Once they know that the authorities care about their needs and problems they are likely to co-operate with those responsible for finding solutions. They may cease evading the payment of tax or its collection if they know that it will be used for their

benefit and for providing them with better amenities and housing. A recent proposal to investigate certain land problems in Nairobi squatter areas showed that the initiators had acquired the 'full time' services of a law student to be employed on the project. He would be under the guidance of the Town Clerk and would be hired on vacational terms. It is highly doubtful whether such services would have been adequate. Nairobi is one of the richest urban authorities in Black Africa and it is surprising that it was unable to afford the services of a fully qualified lawyer on permanent terms or, at any rate, for the duration of the investigation.³¹ Secondly, it is envisaged that lawyers could be engaged to give free and subsidised legal aid to the poor dwellers in these areas. In 1959, an International Congress of Jurists held in New Delhi resolved, inter alia, that:

"Equal access to law for the rich and poor alike is essential to the maintenance of the Rule of Law. It is therefore essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation who are not able to pay for it The primary obligation rests on the legal profession to ensure that adequate legal advice and representation are provided. An obligation also rests upon the state and the community to assist the legal profession in carrying out this responsibility."³²

Most countries which have established Legal Aid schemes have done so under one or the other of three ways, namely, direct government sponsorship, Law societies and clinical Legal Service by Law Schools and Faculties of Law.³³ Writing about 'Law and Poverty', Iya has observed,

"Since the law of supply and demand continues to be the base of our economic system, it is not surprising that the price for legal services which are rendered by a small number of lawyers is too high for most people to afford. Justice is therefore a preserve of those who are rich and knowledgeable enough to get it. Often the poor man is not aware that he needs a lawyer or that a lawyer can help him. He has a home-made store of superstitions and legal half-truths, usually

weighted against his own interests. They discourage him from seeking a lawyer's assistance until someone else - the landlord, the police, etc. has invoked the law against him.

Sometimes, it may be as fundamental a thing as a man's inability to speak, read or understand English that keeps him in total ignorance of his legal rights and remedies."³⁴

At this point in time it may be impossible for the East African governments to provide free legal services for all the poor. However, it must be acknowledged that the urban poor are in a worse position than their rural counterparts as far as their legal needs are concerned. It is in the urban areas that most planning schemes, rules and regulations apply. It is there that some of the most unscrupulous members of society establish offices and hideouts to exploit the urban poor.³⁵ It is suggested that the Governments in collaboration with the Law Societies should set up a fund to provide limited services for the urban poor by way of legal education, advice and representation. The urban residents should be given instructions about their rights and duties in respect of plans and schemes. Part of this service should include the translation of some of the more important planning rules and regulations from English to the dominant vernaculars of the relevant areas.³⁶ There should be established legal clinics to advise the urban dwellers on their land rights and interests. In view of the shortages of lawyers and the unlikelihood that those in practice will willingly give free services, the clinics should be run by third year university students and post-graduate law students at professional schools and under the general guidance of their teachers. In cases where these feel that the person advised would be better served through legal proceedings he should be recommended to the law society to be assisted under the present Legal Aid Scheme as administered by the Law society.³⁷

So far the discussion has centred on the role of the lawyer in

re-examining and simplifying property and planning law for the benefit and protection of the individual owner, developer or occupier. The role as described embraces both substantive and procedure law. The lawyer can and should assist the planning authorities and bureaucracies. In carrying on their various duties and fulfilling their functions these bodies frequently encounter problems of interpretation or of justifying a particular action according to the law. In solving these problems the bodies create administrative norms which, although have no authority as rules of law, do affect the rights and interests of those who occupy the land. Occasionally, such norms are taken into account and judicially noticed by the ordinary courts of law. These interpretations and norms may vary from one organ to another and from one officer to another even though on important issues advice is sought from the Attorney-General's chambers.³⁸ Ideally, each of these bodies should have a direct access to some lawyer or lawyers whose field of specialisation coincides with the department's work. There is need to establish a legal office to be staffed by two or more lawyers with the sole responsibility of advising and representing planning and local authorities on planning and development matters. Presently, each of the capitals in East Africa employs a full time advocate to do its work. But this ranges from drafting, prosecution to dealing with every legal work of the Council and its officials. There are few opportunities for such advocates to specialise in planning law.³⁹ Most of the state's advocates are engaged in criminal prosecutions; but considering that the overwhelming number of criminal cases are prosecuted by the police and private prosecutors, the state ought to release some of its lawyers to concentrate on the very important work of urban planning and development. The establishment of a legal staff to deal with planning matters will avoid some of the obvious errors that occur and give more protection to citizens

whose rights are often overridden by bureaucratic decisions contrary to the rules of law and without means of access to any legal remedy.⁴⁰ It is recommended that as this office becomes more experienced in planning law it will be able to attract law graduates who are interested in urban planning. As more and more pupils graduate from this office the government and local authorities as well as all the bodies whose membership ought to include lawyers will avail themselves of their services.⁴¹

It has been argued that since the state of development in East Africa is such that the region will continue to rely on foreign investment, the nature of the law governing investment should be examined with a view to reforming it. Consequently, in the critical reappraisal of aid programmes, private investments and the place of expatriate experts and advisers use should be made of the legal profession.⁴² It is equally important that the bodies which negotiate for legal aid and foreign capital for investment should contain at least one lawyer in their membership. This may be illustrated by the attempt of the Uganda National Insurance Corporation to obtain funds from a Canadian financial consortium. The Corporation was approached by a Ugandan firm of financial brokers with the information that it had clients who were willing to invest a large sum in the Corporation at generous terms. Without investigation of the latter's credibility and conditions of lending, the Corporation sent three of its senior officials to negotiate for the loan. These were joined in London by one of the Corporation's directors who was a lawyer. In London the four officials were met by the brokers who introduced them to another financier, apparently acting on behalf of the Canadian consortium. The lawyer demanded to see the credentials of the financier who after some hesitation revealed that he too was a broker between the consortium and borrowers. The terms of the brokers were that the Corporation, as the borrower would have to pay their fee before the agreement was signed. According to the sum stipulated this

would have amounted to about 37,500 U.S. dollars. The other Corporation officials were prepared to agree to this demand because the rest of the terms of the loan appeared to be most favourable to the Corporation. However, the advice of the lawyer, namely, that the Corporation could not commit itself to the payment before the agreement was signed prevailed over the three officials. The brokers did not seem to appreciate the legal point but in the end they reluctantly agreed to introduce the Corporation to the representative of the consortium whose office was in Paris.

After further negotiations with the representative in Paris a preliminary agreement was signed. It transpired that in fact the consortium had not engaged the brokers. They had introduced themselves, stating that they had a borrower interested in a loan from the Consortium, and that any arrangements between the brokers and the borrower had no interest for the consortium. This being the case, the lawyer advised his colleagues that no brokerage money would be paid until the sum borrowed had been received into the Corporation's bank in Kampala. The brokers were very annoyed about these developments but as no agreement had been concluded they could do nothing about it. It was later revealed that the consortium's representative had had no actual authority to commit his principals to the terms of the loan. The consortium therefore withdrew its offer of a loan. Meanwhile the brokers had quarrelled among themselves and one of them, the London financier had gone into hiding apparently under suspicion of fraud. It also was revealed that the impressive office in which the meeting between the parties had taken place had been hired for the day of the meeting even though the financier gave the impression that he owned it and the secretaries in it were his employees. The abortive negotiations lost the Corporation a sum of money in the region of £2,000. The loan had been required to build urban houses. Had the negotiating team not included a lawyer it is likely

that the brokerage fee would have been paid thus bringing the total losses of the Corporation to nearly £15,000 - a sum that could be used to build 3 standard houses or 7 "sub-standard" houses or 100 Traditional African houses.⁴³

Section (b) : Lawyers in Inquiries and Tribunals

The basic function of Government is administration of the policy of the state and the formulation of desirable and effective laws, rules and regulations which are designed to ensure the operation and success of the policy. For these purposes, governments are empowered to make rules and regulations, to hold inquiries and take decisions; to inspect the working of the policies, to grant and refuse licences and permits for certain activities implied by the policy and to enforce standards of operations imposed by planning schemes both national and local. It is to be appreciated that not all these powers can be described as administrative. Many of them are legislative while others are judicial or quasi-judicial. The case of licensing may be taken as an example. An Act may require a minister to make licensing regulations and to appoint licensing officers. The appointing of licensing officers may be purely an administrative act but the making of the regulations is legislative. A licensing officer appointed under the Act may be required to make an inquiry before granting a licence to one of several applicants. In the holding of the inquiry, the officer may be under a duty to hear evidence, listen to all applicants and to observe the rules of natural justice before coming to a decision. While his final decision is bound to be administrative, the conduct of the inquiry will be judicial.⁴⁴ Modern states endeavour to subject both the law-maker and the administrator to law. If this were not done the gap between the norm and practice or between what ought to be done and what is actually done would widen. Ideally, the norm ought to reflect the sentiments and practices

of the majority subjects for which it is intended. It is only when there is considerable consensus of opinion on the need for a given norm and when there exists habits and behaviour which support that norm that the law acquires political legitimacy and, is capable of being enforced easily.⁴⁵

It sometimes happens that a given behaviour has failed to conform to the established law or that certain behaviour exists which requires the enactment of new law to contain it. It is here that we may discuss Inquiries and Tribunals and the part lawyers should play in them especially in the field of planning and development. Generally speaking, Tribunals replace the ordinary courts which normally determine deviance from the given norm while inquiries precede an executive or legislative act.⁴⁶

The purpose of holding inquiries is twofold. In the first place, inquiries reveal the necessary information upon which the government or other public authority may later base its decision, act or legislation. In the second place, the holding of inquiry is designed to protect the interests of individuals most directly affected by a government proposal. It is therefore important that persons who are given the task of holding an inquiry be given power and the means of obtaining information required and, a reasonable balance between the conflicting interests concerned be struck. Abraham Kiapi has stated that:

"Primarily, inquiry is a device used for giving a fair hearing to objectors before the final decision is made on some important matter. It is used for assuaging the feelings of the citizen and giving his objections the fairest possible consideration. But inquiries are also a very necessary instrument of the administrative process by aiding the decision maker to collect as much information as possible before reaching a decision."⁴⁷

All the three East African countries have what are known as Public Inquiries Acts. In Uganda, for instance, the Act provides for the setting up of a Commission of Inquiry to investigate into the conduct of a public officer

or into any other matter on which in the opinion of the Government it would be in the public interest to have such an inquiry.⁴⁸ Commissions sit in public unless, for some good reason, they direct otherwise. The proceedings are similar to those followed in a criminal case Trial.⁴⁹ Persons whose conduct may be called in question are allowed to be legally represented and witnesses can be compelled to appear and produce relevant documents.⁵⁰ Persons who are directly affected by the inquiry must be given notice and opportunity to refute anything alleged against them. The commission examines the evidence, weighs the arguments and deliberates before making a report to the appropriate authority.⁵¹ The report is usually published but normally there is no obligation on the part of the receiving authority to publish it.⁵² In all the three countries every person who desires to establish or erect any factory for the manufacture of explosives is required to make an application in writing to the official responsible for licensing explosives.⁵³ The authority may refuse the application or direct that an inquiry be held as to the expediency of granting the application. If an inquiry is to be held the authority must cause a notice to be published in the Official Gazette and once a week for three consecutive weeks in one or more newspapers circulating in the area in which it is proposed to erect or establish the factory. The notice must state that an application has been made for the grant of a licence to erect a factory for the manufacture of explosives, describing as far as possible the proposed site of the factory. The notice further states that a commission will sit to hear any objections to the grant of such a licence, and the date, time, and place on or at which that commission will sit to hear the application. The local authority having jurisdiction in the area in which, or within one mile of which, the site is to be situated may lodge an objection in writing to the grant of any such licence with the chairman

of the commission not later than seven days prior to the sitting of the commission. A right of objection is also granted to any person residing or carrying on business within a mile of the proposed site or any person who can show a substantial interest in opposing the grant of the licence.⁵⁴

Besides commissions of inquiry set up under the general statute, other official inquiries whether departmental or institutional can be held.⁵⁵ In England public inquiries were deemed to be of such importance that The Franks Committee was appointed to study the subject and make recommendations.⁵⁶ Among the Committee's recommendations were the following:

- "(a) that the individual should know in good time before the inquiry the case he would have to meet;
- (b) that any relevant lines of policy laid down by the ministry should be disclosed at the inquiry;
- (c) that the inspectors who conduct inquiries should be under the control of the Lord Chancellor and not under the Minister directly concerned with the subject matter of their work;
- (d) that the inspectors' report should be published together with the letter of the Minister announcing the final decision;
- (e) that the decision letter should contain full reasons for the decision, including reasons to explain why the Minister had not accepted recommendations of the inspectors;
- (f) that it should be possible to challenge a decision made after a public inquiry in the High Court on the grounds of jurisdiction and procedure."⁵⁷

Most of the Committee's recommendations were accepted by the Government and brought into force by legislation and administrative action.⁵⁸ It has been suggested that several of the planning and development decisions which take place in East Africa should be preceded by public inquiries and barazas.⁵⁹ There is no reason why the Franks Committee's recommendations should not be suitable for the conditions and circumstances that prevail

in East Africa. Their adoption would promote public participation in the planning process and protect the rights and interests of persons affected by a much more rigorous procedure and disclosure of information. In addition, it is suggested that it should be a principle of these inquiries that they are either presided over by a legally qualified chairman or the body holding them should contain at least one lawyer as a member. One of the uses of public inquiries may be said to be political. When a government policy has gone wrong or an event of catastrophic magnitude has occurred, the holding of a public inquiry into the circumstances leading to the failure of the policy or the occurrence of the event relieves the pressure that may be exerted on the government, at any rate, while the inquiry is pending or proceeding.⁶⁰

There are certain matters which, because of their nature and content, parliament or whoever is sovereign in the state, considers unsuitable for the ordinary courts of the land and which, it has decreed, shall be best dealt with by persons or bodies other than the ordinary judges or courts. Judicial and quasi-judicial decisions on these matters are currently being made by Ministers, public officers and what are-by far, the most important organs - special tribunals. This field of adjudication is sometimes referred to as administrative jurisdiction or justice.⁶¹ A number of reasons have been given to justify administrative jurisdiction. It is said that the type of case which comes before special tribunals is different from that normally heard before an ordinary court. Tribunals are concerned with administrative policy as much as judicial decisions. They have to reconcile the rights of the individual with the implementation of government policy while ordinary judges are usually insulated from this concept in many cases. The number of cases to be decided would grossly overburden the ordinary courts.⁶² The procedure to be followed by tribunals

is more appropriate to the type of dispute. Technical and professional knowledge may be absolutely necessary before the tribunal reaches a decision and it is easier if its members possess such knowledge. The doctrine of 'Stare Decisis' observed by the ordinary courts would sully flexibility and feasibility of administrative policy.⁶³ Tribunals reach decisions more quickly and are cheaper.⁶⁴ It has also been suggested that because judges are more concerned with the technicalities of the law, they would be unconcerned about government policies and this might lead to obstructing public service functions if they were allowed to determine this type of dispute.⁶⁴

There are so many bodies with judicial and quasi-judicial powers that it is not appropriate for our purposes to enumerate them one by one or indeed, to describe them in any greater detail. Characteristically, they differ in composition, functions and powers. A general classification has been attempted by Harvey and Bather.⁶⁵ They categorise them into three groups as follows:

- (a) Those which deal with disputes in which the government or a public authority is directly involved.
- (b) Those which deal with disputes between one individual and another but the dispute and decision are based directly on some public policy.
- (c) The third group consists of those disputes which the learned authors call Domestic Tribunals.⁶⁶

By way of illustration, the first category would include a public officer claiming that his dismissal from the public service was politically motivated.⁶⁷ The second would include a trade union claiming that the employer was paying less than the statutory minimum wage, and the third would include the enforcement of professional discipline of a member of any

given profession by a disciplinary committee of the profession. The distinction between the second and third categories is more apparent than real because often the manner in which professions shall conduct themselves and the rules under which members are to be governed are matters that concern public policy.⁶⁸ Among the well known tribunals may be mentioned the Industrial courts, land tribunals, rent tribunals and the disciplinary committees of advocates, doctors and surveyors. These are established by specific Acts of Parliament, but there may be others set up to determine contemporary disputes or issues on an ad hoc basis.⁶⁹

An understanding of the nature and value of a tribunal would necessitate the analysis of its composition; whether or not its members are government officials or independent persons and whether they are conversant with or have special qualification in the subject matter of the inquiry; and who is responsible for their appointment, and removal from office; who determines the powers and jurisdiction of the tribunal; the procedure to be followed; and whether an appeal is allowed from its decision either on law, fact or both or on the merits.⁷⁰ The Franks Committee made certain recommendations on tribunals for England. These included the requirement that the chairman of a tribunal should be legally bound to give reasons for the tribunal's decision and that appeals on points of law should be allowed.⁷¹ In England there is a Council on Tribunals whose function is to keep the constitution and working of many tribunals under review.⁷² In the context of East Africa, it is proposed that lawyers should be engaged on work of tribunals. There is no doubt that in their functions of adjudication a number of the tribunals do influence how plans and schemes as well as specific projects shall be initiated and implemented. In determining disputes and analysing information it is important that those responsible for inquiries and tribunals should be familiar with the concepts,

objectives and techniques of planning and development.

In concluding his article, McAuslan drives the point home by saying that the law and the lawyers have a good deal to answer for in respect of the present malaise of town planning. He sees the stress on property as pervading the whole planning process and distorting the vision of both lawyers and planners. Both are insufficiently concerned with people as people, looking on them too much as property-owners, or units to be planned for and as a result,

"Attention has thus been diverted from fundamental issues of public participation, of creating opportunities for more meaningful public debate on alternative policy choices, and of the values and ideologies of and controls over planners Law is seen too often now as an irrelevancy, an obstruction to community planning, community action and public participation. Nor is it regarded with very much more favour by the planning establishment, which either ignores its role, or criticises it for strifling creativity."⁷³

It has been said that the legal system is fundamentally a normative instance of history. It defines goals, decides what roads society must travel, and dictates the norms of social action. The legal system, therefore, has within its essence, a profound political content; it is not a flower which blossoms in the desert. Law always expresses a vision of society. It also expresses the grounds behind this vision and the interests served by conceiving the society in that particular form.⁷⁴ Justice Holmes once observed that

"In-as-much as the real justification of a rule of law, if there be one, is that it helps to bring about a social end which we desire, it is no less necessary that those who make and develop the law should have these ends articulately in their minds."⁷⁵

It has also been said that the creative synthesis of law with sociology, and of law with economics, is producing a wider range of options for persuading, inducing and delegating. In most developing countries this

range of alternative options has not yet been developed.⁷⁶

The central theme of this study has been that lawyers cannot be neutral about planning and development. The legal profession must place itself in a climate in which it will make positive contribution to urban planning and development. In most developed countries the role of law and of lawyers is determined largely by the social culture and ideology of the nation which have long histories behind them.⁷⁷ In most developing countries social cultures and ideologies are in the formative stage and the law cannot afford to step aside until these have matured. It must be directed to their growth, consistency and nurture. In the political, economic and social changes taking place in East Africa, there is little doubt that problems of urbanisation, urban land, planning and development will increasingly bring pressure to bear on the communities and governments concerned. The solution to these problems will involve the statistical data and other information collected, analysed and supplied by all the disciplines which engage in the study of man and his environment. The collection and analysis of the data and information will necessarily call for improved methods of empirical research services which are of valuable assistance in the training of personnel for planning and administering urban development. Inevitably, lawyers will be invited to participate in finding those solutions. The lawyers will need to discuss the relevant problems in the context of the national plans and laws. They will need to communicate with other disciplines engaged in planning and development. It is only then that the legal profession will appreciate planning, not as intended to interfere with private rights of their clients but as an aspect of an ordered community, and only then will law cease to be regarded as an obstacle to and become accepted fully as an instrument of planning and development. It is this attitude which will educate the general public,

including the people currently responsible for planning, to appreciate that lawyers can and should play a much greater role in planning and development than merely providing the legal techniques of drafting, interpreting and arguing points of law with little care of what precedes or follows the results.

Law has been described as capable of reflecting different modes in society. It can be an isolated and abstract phenomenon. It can be static and anachronistic. It can be used as an instrument of terror and oppression. On the other hand, it can be an instrument of policy and social change, quite adaptable to new political, social and economic dimensions. It can be a stabiliser of society.⁷⁸ As to which of these modes is to prevail in East Africa is the concern and responsibility of the entire community, but more specifically for the law-makers, the judges and the legal profession. Society is at liberty to choose whatever law it wishes to be governed by, but ultimately, the growth and the stature of that society will be determined and controlled by the manner in which that law is used. The late President of the United States of America, J.F. Kennedy, is said to have imbued his countrymen with the spirit that,

"Do not ask what your country can do for you.
Think about what you can do for your country."⁷⁹

In its various functions and responsibilities the legal profession in East Africa should be imbued with the same spirit. A law which conflicts with the convictions of the community and which fails to take into account and promote the needs of that community is a dead law and may be destined always to repose on the bookshelves of lawyers and academics. Napoleon, reckoned one of the greatest war commanders of all time, wrote from St. Helena where he was exiled, and said,

"My true glory is not to have won many battles ... my defeat at Waterloo will erase the memory of so many victories but what nothing will destroy, what will live forever is my civil code."⁸⁰

Unfortunately, the legal 'Waterloos' in urban planning and development are not easily erased. They are to be found in the urban concrete 'jungles', in the slums, and shanty towns. They are evident in the human miseries that result from hunger, ignorance and disease. The new brief of the lawyer in urban planning and development must be such as will eradicate or, at least, minimise these miseries. It must be a brief whose instructions embrace the whole society planned for rather than the mere interests of the client able to pay for legal services.

NOTES

CHAPTER ONE

1. For a short commentary on these planners, see McLoughlin, Brian, J.,: Urban and Regional Planning - A systems Approach, 1972 reprint, Faber and Faber, London, pp. 305-312.
2. Hake, A.,: Nairobi: Seizing the Opportunities of Urban Growth, Urban and Regional Planning in East Africa, 1970, Adult Education Centre, Kampala, pp. 222-230.
3. In Urban Planning and Land Development Control Law, 1973, New York, Oceana Publications, p.1.
4. It is not unusual to sue constructors and builders for negligence. In some cases they may be prosecuted for criminal negligence.
5. Conference Report, Problems of Foreign Aid, Study no.3, 1965, Dar es Salaam, Institute of Public Administration, p. 275.
6. Definitions and Needs in Aid described in Conference Report, n. 65 above, pp. 12-36. As to why countries give aid, see same Report pp. 69 and 85.
7. East Africa Economic Review, December 1971, vol. 3, No.2.
8. Morgenthau Hans: A Political Theory of Foreign Aid in Why Foreign Aid? 1963, Chicago, Rand McNally; Shumacher, E.F.: A Humanistic Guide to Foreign Aid in Commentary, 1961, New York, American Jewish Committee.
9. Gitelson S.A.: United Nations Development Programme Assistance to Uganda, 1969, Kampala, University of East Africa Social Sciences Council Conference, Political Science Papers, p. 98.
10. Kamarck, Andrew M.: The Economics of African Development, 1967, New York, Frederick A. Praeger.
11. The United Kingdom, following Tanzania's intentions to implement the Arusha Declaration by nationalisation and Uganda's expulsion of Asians in 1972.
12. Differences for example as to the degree of public and private participation in economic development.
13. Journal of the American Institute of Planners, September, 1971, Vol. XXXVII, No. 5, p. 294.
14. The policies are usually included in Political Party manifestoes before a General Election. See, for example, The Text of the Labour Party - T.U.C. statement on Economic Policy, 'Times', 1.3.1973.

15. Reported in the 'Times', 6.2.1973.
16. The parties agree that everyone should at least have a good home and that the problems of urban traffic should be controlled. They disagree on methods.
17. The overthrow of the civilian government in Uganda and the establishment of one-party Parliaments in both Kenya and Tanzania mean that the Governments are not subject to the will of the electorate.
18. Hagman, Donald, op. cit.
19. In the United Kingdom the attitude is gradually changing especially with the introduction of the structure Plan. See Heap Desmond: The New Town Planning Procedures - How They Affect You, 1968, London, Sweet and Maxwell, pp. 2-4.
20. Cmd. 3333.
21. Tribe M.A.: Some Aspects of Urban Housing Development in Kenya, Development Trends in Kenya, 1972, Centre of African Studies, University of Edinburgh, pp. 245-246; 'East African Standard', 24.6.71 and 'Daily Nation', 7.10.71.
22. Urbanization in Newly Developing Countries, Modernization of Traditional Societies Series, Englewood Cliffs, N.J., Prentice-Hall, Inc., p. 129.
23. Seidman, Robert, in Wisconsin Law Review, op.cit. n.45.
24. For a detailed examination of the Legal Profession under the common law, see: Abel-Smith, Brian and Stevens, Robert: Lawyers and the Courts; A sociological Study of the English Legal System, 1750-1965, 1967, London, Heinemann Educational Books, Ltd, especially Part III, from p. 247.
25. See Maher, F.K.H., Waller, P.L., and Derham, D.P.: Cases and Materials on the Legal Process, 1971, London, The Law Book Company, Ltd., from p.77.
26. Telling, A.E.: Planning Law and Procedure, 1973, London Butterworths & Co. (Publishers) Ltd., p.6.
27. See Maudsley, R.H. and Burn, E.H.: Land Law- Cases and Materials, 1970, Butterworths, London, from p. 521
28. A Concise History of the Common Law, p.194.
29. Byrd, Elbert, M., Jr.: The Role of the Lawyer in the Economic and Social Development of His Country Within the Framework of the Rule of Law, 9164, Journal of the International Commission of Jurists, Vol. V, nos. 1-2, p.57.

30. (1952) 2 ALL.E.R.76.
31. Six Carpenters' case (1610) 8 Co. Rep.146b.
32. (1765) 19 St. Tr. 1066.
33. Cf. Elias v. Pasmore (1934) 2 K.B. 164
34. Ibid
35. Ibid, at p.249.
36. (1865) 11 H.L.Cas.642.
37. (1868) L.R. 3 H.L. 330
38. (1863) 14 C.B. (N.S.) 180.
39. Berle, A.A., Jr.: Modern Legal Profession, 1933, 9 Encyclopedia of the Social Sciences, New York, The Macmillan Company, pp. 340, 343-345; Fryer, T. and Benson Carville J.: Cases and Materials on Legal Method and Legal System, 1950, St. Paul, West Publishing House, pp. 642-643.
40. Op. Cit., p. 55
41. Infra, see n. 174
42. Op. cit. p.124
43. The 'Standard', Tanzania, 1.7.1966, p.5.
44. Ross S.: The Legal Profession in Uganda, October, 1971, Kampala, Makerere Law Journal, Vol. 1, no. 1, p. 136.
45. 'Pravda', Moscow, 4.9.1961; Aleksandrov, N.G. and Others: The Foundation of the Theory of the State and of Law, 1960, Moscow, pp. 202-204; Matsumoto, Kazuyoshi: Human Agents in Social Control, 1962, Japanese Sociological Review, pp. 19-34; Broeder, D.W.: Impact of the Lawyers: An Informal Appraisal, 1966, Valparaiso University Law Review, p.40; Friedman, Lawrence M.: The Law of the Living, The Law of the Dead; Property, Succession and Society, 1966, Wisconsin Law Review, 340-378.
46. Infra.
47. For Africa, see Nyhart: Law, Lawyers, and Private Sector. Institutions in Africa; Managing Economic Development in Africa; at p. 175; Allott, A.: Legal Development and Economic Growth in Africa, 1963, Changing Law in Development Countries.

48. Cross, Rupert, Sir: In an interview with author at Oxford University, 1973: On Methodology of Legal Reform.
49. Byrd, Elbert M. Jr., *ibid*, pp. 52-56.
50. (1948) 1 K.B.223: (1948) L.J.R.190; 63 T.L.R. 623.
51. (1943) 1 ALL.E.R.1, 168 L.T.118.
52. (1971) A.C.721 reversing (1969) 2 Q.B.332
53. See also, *Corporation of the City of London v. Secretary of State for the Environment and Another* (1971) 23 P. & C.R.169, as to conditions that may be attached see Minister circular 5/68 of 6.2.1968.
54. *Commissioner of Lands v. Shamdas Horra*, civil case no. 504 of 1952, Kenya High Court, (unreported).
55. 86 E.R. 687
56. (1958) E.R. 794
57. (1957) E.A.123.
58. In chapter six.
59. *Ibid.* see n.99
60. Homes, Roadbuilders and the Courts: Highway Relocation and Judicial Review of Administrative Action, December 1972, *Southern California Law Review*, Vol. 46, no.1.
61. 296 F. Supp. 907 (N.D.111, 1969), 304 F. Supp. (N.D.111.1969) (supplemental judgment order), *aff'd* 436 F.2d 306 (7th Cir. 1971).
62. It is suggested that this was participation in development on the part of the court.
63. Civil No. c-69 324 (N.D. Cal. April 30, 1970).
64. Kanyeihamba, G.W. and Katende J.W.: *The Supranational Adjudicatory Bodies and the Municipal Governments, Legislatures and Courts: A Confrontation*, Summer 1972, London, Public Law, Stevens & Sons Ltd., p. 130.
65. It is suggested that whatever form and character, every Government would wish this to happen for its every proposed policy.
66. *Legal Culture and Social Development*, *Law & Society Review*, Vo.4, 1969-1970, p.29.

67. The Plan, The Planners and The Lawyers, op.cit. 274.
68. This was pointed out in Britain by the Skeffington Report Committee on Public Participation in Planning, People and Planning, HMSO, 1969: Also see: Reynolds, J.P.: Public Participation in Planning, July 1969, Town Planning Review, Vol. 40, No.2, pp. 131-48.
69. Cullingworth, J.B.: Town and Country Planning in Britain, op.cit., p. 293.
70. Op.cit. p. 314.
71. See Hagman, Donald G.: Urban Planning and Land Development Control Law, op.cit., section on Advocacy Planning.
72. For a comprehensive and academic description of planning see Trubeck David M.: Law, Planning and Economic Development: Towards a Reconsideration of Weber's Sociology of Law, 1972, New York, International Legal Center.
73. Op.cit. p. 3.
74. Jinja Outline Scheme, 1960, Entebbe, Government Printer.
75. Commemorating Speke's 'discovery' of the source of the Nile. The first European to do so. One of the aims in planning is to preserve buildings and monuments of architectural or historical interest.
76. The Detailed Scheme of the Jinja Plan, see n. 134 above.
77. Tetlow John and Goss Anthony: Homes, Towns and Traffic, 1970, London Faber and Faber Ltd., Paper covered edition, p. 238.
78. Galanter, Marc, in a paper presented at the International Legal Center Conference, 1972, New York, on Law and Development.
79. For instance, see McLoughlin, Brian J; Urban and Regional Planning: A Systems approach, 1969, London, Faber and Faber, chapters 4 and 12.
80. Administrative Aspects of Development Planning and Plan Implementation: Discussion Paper No.91, 1973, Nairobi, Institute for Development Studies, University of Nairobi.
81. Gross, Bertram M.: Organisations and Their Managing, 1968, The Free Press of Glencoe, chapter 23.
82. Waterson, A.: Development Planning, Lessons of Experience, 1965, John Hopkins University Press, p. 26.
83. Op. cit. from p. 26, also, see p.53 as to what local authorities are asked to collect and collate information about.

84. Clark, Paul, G.: Development Planning in East Africa, 1965, East African Institute of Social Research, East Africa Publishing House, chapter 1.
85. Cohen, Sir Andrew: Development in Africa: The Problems of Today, July 1968, Journal of Administration Overseas, Vol. VII, No. 3, p.340.
86. Op.cit.. Plan Review.
87. Nairobi Master Plan for a Colonial Capital, 1948, Nairobi, Government Printer, p. 65.
88. Kendall, Henry: Town Planning in Uganda, 1915-1955, 1955, Entebbe, Government Printer, p. 22.
89. Op.cit, current Five Year Development Plan.
90. Cited in Brasseur, R.E.: What Sort of Plans?: A conference paper, Occasional Paper No.10, 1968, Kampala Department of Geography, Makerere University, Kampala.
91. And this would be contrary to comprehensive planning, it is suggested.
92. In Graveson R.H., Edit.: Law: An Outline for the Intending Student, 1967, London, p.7.
93. Graveson, supra, p.5.
94. Faludi Andreas: A Reader in Planning Theory, 1973, Oxford, Pergamon Press, Ltd., Part I.
95. Trubek David M.: Max Weber on Law and The Rise of Capitalism, p. 721.
96. Among those mentioned are the following, Galanter, 1966; Friedman, 1969; Karst, 1967; Konz, 1969; Mendelson, 1970; Seidman, 1972; Steinberg, 1971 and Steiner, 1971.
97. Infra.
98. Hazard John N. and Shapiro Isaac: The Soviet Legal System, 1962, New York, Oceana Publications, Part II, p. 67.
99. In Legal Education and Socio-Economic Change: Brazilian Perspectives, 1971, New York, 19 American Comparative Law, p. 39.
100. Seidman, Robert in 1972 Wisconsin Law Review, no.3.
101. Twining W.: The Role of Lawyers in a Developing Country, March 1965, Dar es Salaam, The East African Academy, paper read at a conference; Nyhart: The Role of Law in Economic Development, 1962 S.L.J.R. 394; Allott: Legal Development and Economic Growth in Africa, 1963, Changing Law in Developing Countries.

102. Op.cit.
103. And yet a number of recommendations in the Report would have necessitated the reform of the law, as for instance, Municipal Authorities Ordinances dealing with local authorities and their powers to find accommodation for the urban population. The powers were permissive. The recommendations would have made them obligatory.
104. See n.46 and Twining W.: Legal Education Within East Africa, 1966, London, The British Institute of International and Comparative Law, series 5, p. 115.
105. Infra.
106. The editor of the Review.
107. See chapter 8.
108. Seidman, ibid.
109. On the rare occasion when there is a tricky legal problem, advice is sought from the Attorney-General's chambers.
110. As to the non-existence of some of the necessary regulations, see Walsh Annmarie Hanck: The Urban Challenge to Government - An International Comparison of Thirteen Cities; New York, Frederick A. Praeger.
111. Infra.
112. McAuslan, J.P.W.B.: The Plan, The Planners and The Lawyers, 1971, (Winter) London, Public Law. p. 248.
113. See, for instance: McAuslan, J.P.W.B. and Roberts Neal A: Land Use Planning and Development Law, Vol. II, 1973-1974, University of Warwick, unpublished, in which the two learned lawyers resort to the use of materials which a traditional and legalistic lawyer might regard as "non-legal".
114. The Role of the University in an Underdeveloped Country, 1969, Kampala, Mawazo, a Makerere University publication, Volume 2 no.1 p. 29; see also Thomson, Hugh H.: Some Human Aspects of Manpower Planning in Developing Countries; April 1972, Journal of Administration Overseas, volume XI, no. 2., p. 101.
115. Sellitz C. and Others: Research Methods in Social Relations, 1971 Reprint, London, Methuen & Co. Ltd., p. 4.
116. Ilukor, John, Staff Seminar, Nov. 1969 Makerere University, Kampala.

117. Bertolt Brecht: The Life of Galileo, 1963, London, Methuen & Co. Ltd. pp. 117-118.
118. Leys Colin, op.cit. n.59.
119. Paper presented by author: The Role of Lawyers in Urban Planning, April 1973, London School of Oriental and African Studies, University of London.
120. See Bibliographies provided at the end of every chapter by Cullingworth, J.B., in his: Town and Country Planning in Britain: The New Town and Country Hall Series, No.8, 1972, London, George Allen & Unwin, Ltd., and Chambliss, William, J. and Seidman, Robert, B., Sociology of the Law: A Research Bibliography, 1970, Berkeley, California. The Glendessary Press Inc.

Reviewing Telling's Planning Law and Procedure, n.86 above, Keith Davies wrote, "but previous works (on planning law) had tended to be written in the form of annotated texts of the statutes, or accounts closely following the statutory provisions. Sir Desmond Heap's 'Outlines of Planning Law' is an example..... but there is a place,..... for a more detached type of writing....."
121. Infra. See chapter eight.
122. Op.cit.
123. Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government, (1960) A.C.260, and Buxton and others v. Minister of Housing and Local Government (1960) 3 W.L.R.866.
124. Op.cit.
125. For a full bibliography see Pahl, R.E.: Patterns of Uganda Life: Aspects of Modern Sociology, 1971, London, Longman Group Limited, from p. 138.
126. Journals of the Town Planning Institute and Transport, Economics and Policy, Town Planning Review and Urban Studies, among others.
127. For example in citing Pyx Granite Co. Ltd. v. Minister of Housing and Local Government, n.155, Cullingworth simply states, "This famous case is widely reported in legal texts."
128. Cullingworth, 326 pages, Telling, 326 pages.
129. Charlesworth J.: The Principles of Planning Law, 1948, London, Stevens & Sons Limited.
130. Twining, William, op.cit.
131. To practise in these professions, a Kenyan must satisfy the requirements that are currently in force in England.

132. Infra.
133. The East African Town Planning Conference, Kampala, 1956, Entebbe, Government Printer, Forward to the Report.
134. Stevens had apparently consulted a High Court judge before making the comment, *ibid*.
135. The Community organises international conferences to which experts in planning and development are invited to participate and deliver papers while the latter two hold annual meetings at which members present and discuss papers. These are usually published by the East African Universities, *op.cit*. The Social Sciences Council Conference is held in one of three capitals in succession each year.
136. Professor Peter Rigby in a conversation with the author.
137. Heuston, R.F.V., edit: Salmond on the Law of Torts, 1965 edition, London, Sweet & Maxwell, p.1.
138. The Working Party on Rent Control appointed by the Minister for Commerce and Industry, Report 1965, Nairobi, Government Printer; The Working Party on Building Standards, appointed by the Development Committee of the Government of Kenya, Minute No.40 of 23.11.1961.
139. Reasons for repeal were given as follows: The ordinance was complicated and unsatisfactory. A central control Board and a Coast Control Board were established and appeals were only allowed on points of law or of mixed law and fact to the Supreme Court of Kenya. There was considerable delay in the hearing of cases and many dragged on for a period of years. Costs of administration were high and the cost of bringing a case before the Board or of defending a case were frequently high.
140. The Working Party Report, p. 2.
141. The list of participants is given at the end of the Conference Report. Among the topics discussed were land tenure, legislation, building regulations, administrative structures and control of planning and development.
142. Suggested that this ought to be the overriding consideration.
143. See the section on Rates and Rents in chapter Eight.
144. The determination of compulsory acquisition, compensation, inquiries and planning applications invariably involves or presupposes a knowledge of the principles of planning and of law.
145. Law and Society in Developing Nations, 1972, Wisconsin Law Review, No.3, p.1..

146. Muthiora Johnstone: *The Human Element in Town and Village Planning*, 1969, Kampala, University of East Africa Social Sciences Council Conference, Sociology Papers, Vol. 2, p. 332.
147. Morgan W.T.W., Edit.: *East Africa: Its Peoples and Resources*, 1969, Nairobi, Oxford University Press, p. 45.
148. The accuracy of Nigerian Census has been questioned. See Aluko S.A.: *How Many Nigerians? An Analysis of Nigeria's Census Problems, 1901-1963*, October 1965, *Journal of Modern African Studies*, III, No.3, pp. 376-77.
149. Hance, William A.: *Population, Migration and Urbanization in Africa*, 1970, New York, Columbia University Press, tables 16 and 19 at pp. 228 and 232, respectively.
150. East Africa Royal Commission Report, H.M.S.O. Cmd. 9475, June 1955, London.
151. Berry L.: *Physical Features in East Africa*, (in Morgan, see n.1 above) etc (ibid) p. 59.
152. U.N.E.C.A.: *The Demographic Situation in Eastern Africa*. p. 3; Hance, William A., (ibid), pp. 382-390.
153. Breese Gerald, Edit: *Urbanization in Newly Developing Countries*, 1966, Englewood Cliffs, N.J. Prentice-Hall, p. 128; Gutkind, Peter C.W.: *Urban Conditions in Africa*. April 1961, *The Planning Review*, XXXII, No.1, 20-32; Jenkins, George: *Africa As It Urbanizes: An Overview of Current Research*, March, 1967, *Urban Affairs Quarterly*, 11, No.3, pp. 68-80; Oram, Nigel: *Towns in Africa*, 1965, London, Oxford University Press.
154. East Africa (n.147) chapters 14-16.
155. Glentworth Garth: *Rural Electrification and Planning in Uganda: The Role of Urban and Regional Planning in National Development of East Africa*, Kampala, Milton Obote Foundation, p.283.
156. Smith, David N.: *Man and Law in Urban Africa - A Role for Customary Courts in the Urbanization Process*, 1972, New York, International Legal Center.
157. Rothchild Donald, Edit.: *Politics of Integration: An East African Documentary*, 1968, Nairobi, East Africa Publishing House.
158. For advantages and disadvantages of association see: Burley John and Treager Peter: *African Development and Europe*, 1966, London, Pergamon Press; *UNSA and UNA Youth: The E.E.C. and The Third World*, London.

159. The Treaty for East African Co-operation, Art. 2 (1).
160. The Treaty, etc. (n. 13) Arts. 23 and 29 especially.
161. See, the Uganda Land Transfer Act. s.2.
162. Before independence, Makerere University College (associated to London University) was the only institution of higher learning in the region and all East African schools followed the same syllabus to qualify for entry. The same practice continued after independence until 1972 when only Tanzania withdrew from the East African Examination Council.
163. A comparison of the Municipal and Urban Authorities Ordinances and Acts in force in the three territories shows remarkable similarities among the authorities, powers, descriptions and functions.
164. 1967 and 1972 respectively.
165. Each of these professions has an East African association which brings the members together to discuss matters of common interest each year.
166. Until the late 1960s, education institutions in East Africa were shared between the three territories in such a way that, for instance, the only Engineering Faculty was at Nairobi, the only Law Faculty at Dar es Salaam and the only Medical School at Kampala.
167. The poverty in rural areas of East Africa is not so acute because "most families own a 'shamba' on which they grow food and cash-crops for the bare necessities of life and because family ties are stronger in rural than in urban areas, no one is likely to starve in the former unless everyone else is without food.
168. U.N. Demographic Yearbook, 1968, New York, pp. 98-103
169. e.g. Eastwell in Urban & Regional Planning in East Africa, op.cit. pp. 60-61.
170. The East African National Development Plans contain forecasts of demographic data up to the year 2000 A.D. see: Plans for 1971/75, Government Printer, Nairobi, Dar es Salaam and Entebbe, respectively.
171. Hance, William A., op.cit. (n.3), p. 209.
172. Turner, John F.C.: Uncontrolled Urban Settlement: Problems and Politics, Working Paper No.11, 1967, New York, U.N. Publications, p. 43.

173. Hoover, Edgar M. and Vernon Raymond: Anatomy of a Metropolis, 1959, Cambridge, Harvard University Press; The Paper Metropolis, 1962, London, Town and Country Planning Association.
174. In 1972 there were more than 200 advocates in Uganda and of these only about a dozen had chambers outside Kampala. The Faculty of Law, the Law Development Centre, The Attorney General's chambers and the High Court are all in Kampala. Same set up in Nairobi and Dar es Salaam.
175. The National Development Plans emphasize this point, infra.
176. Furedi Frank: The African Crowd in Nairobi: Popular Movements and Elite Politics, 1972, London, Institute of Commonwealth Studies, University of London; Pye, Lucian W.,: The Political Implications of Urbanization and Development Process, 1963, U.N. Publications, Geneva, p. 89.

CHAPTER TWO

1. Studies about the relationship between Land, Law and Development in East Africa may be found in the following publications:
Land Law Reform in East Africa, 1969, Kampala, Adult Education Centre; East African Law and Social Change: African Contemporary Monographs, No.6, East African Institute of Social and Cultural Affairs, 1967, Nairobi, East African Publishing House; Urban and Regional Planning in National Development of East Africa, 1970, Kampala, Adult Education Centre; East African Law Today, op.cit., Development Trends in Kenya, 1972, Edinburgh, Centre of African Studies, University of Edinburgh; Development and Society: The Dynamics of Economic Change, 1969, New York, St. Martin's Press; African Socialism, 1964, Stanford, Stanford University Press; Perspectives on Urban Planning for Uganda, 1969, Kampala, Makerere University; Maini, Krishnan M.: Land Law in East Africa, 1967, Nairobi, Oxford University Press; and Ghai, Y.P. and McAuslan, J.P.W.B.: Public Law and Political Change: A Study of the Legal Framework of Government from Colonial Times to the Present, 1970, Nairobi, Oxford University Press, chapter 111.
2. See, for instance Lukwiya, R., Odongo, J., Ligale, A., Eastwell, J., Ikondya, C., Saylor, G., Livingstone, I., and Von Freyhold, E.: in The Role of Urban and Regional Planning in National Development of East Africa, op.cit. from p.37. Each of the East African National Development Plans touches on this plea.
3. Adeolu, O.: Lagos - Planning Problems in an African Metropolis, Rosser, C.: Housing and Planned Urban Growth - the Calcutta Experience; Prion, I.: Urban and Rural Development in Regional Planning - Israel; for Nigeria, India and Israel at pp.212, 207, 251, respectively in The Role of Urban and Regional Planning in National Development of East Africa. For the U.S.A., see Plager, Sheldon J. and Handler, Joel F.: The Politics of Planning for Urban Redevelopment: Strategies in the Manipulation of Public Law, Summer, 1966, Wisconsin Law Review, pp.724-775 and for Britain, see Cullingworth, J.B.: Town and Country Planning in Britain, op.cit. from p.293.
4. Op.cit.
5. Land Law is a compulsory subject in almost all the Law Faculties and Schools of the Commonwealth Universities - see Handbook of each university, 1973/4 session.
6. Ibid.
7. Taxation Inquiry Commission Report, 1954, New Delhi, Part III, p.709.
8. Op.cit., p.362.
9. Op.cit. para. 3.27.
10. Gitao, J.: Location of Industry and Policies for Location in Kenya in The Role of Urban and Regional Planning, etc. op.cit. p.132.

11. In The East African Town Planning Conference Report, Kampala, 1956, op.cit.
12. (1957) E.A.101.
13. (1922) 3 U.L.R., cited in Njuba, Sam, K.: Cases and Materials on Land Law in East Africa, 1972, Kampala, Makerere University, p.95.
14. (1963) E.A.408 (p.c.).
15. Civil suit no.419 of 1968, Uganda High Court.
16. Uganda Third Five Year Development Plan, op.cit. p.356.
17. See Mkambo Mugerwa, P.J.: Land Tenure in East Africa - Some Contrasts in East African Law Today, op.cit. p.101.
18. Ibid, at p.96.
19. 1 U.L.R.9.
20. 2 U.L.R.207.
21. Mukwaya, A.B.: Land Tenure in Buganda: Present Tendencies, 1953, Kampala, Eagle Press; Dodson: Comparative Land Tenure of Ten Tanganyika Tribes, 1954, 10 J.A.A. 80; Njega, F.X.: African Land Tenure Concepts in Kenya in Contemporary Setting, December 1966, Dar es Salaam, Journal of the Denning Law Society, University of Dar es Salaam, Vol.1, nos. 1-4, p.265.
22. Op.cit., n.21, pp. 12-13.
23. (1958) 6 C.O.R.L.R.2.
24. Obol-Ochola, James Y.: Customary Land Law and the Economic Development of Uganda, LL.M. dissertation, 1971, University of Dar es Salaam, p.109.
25. Stopford, J.G.B.: English Governor and African Chiefs, 1902-03, Journal of African Society, Vol.2, p.309; Also Asante in (1965), 74 Y.L.J.848.
26. (1913) 5 E.A.L.R.141 and (1914) 6 E.A.L.R. 31.
27. For topics covered so far, see Seidman, Robert, ibid, in Wisconsin Law Review, op.cit.
28. The Ibo Law of Property, Lagos, pp.41-43.
29. Maina, J.W. in East Africa: Its Peoples and Resources, op. cit. at p. 178.
30. Op.cit., n.21, p.265.
31. In East Africa: Its Peoples and Resources, op.cit., p.194.
32. Nyerere J.: National Property: Uhuru na Umoja: A Selection from

Writings and Speeches, chapter 7, pp.53-54; James, R.: Compensation for Unexhausted Improvements under Customary Law, April 1968, Eastern Africa Law Review - A Journal of Law and Development, Vol.1, No.1, p.76.

33. Kato, L.L.: Has Customary Law in English Speaking Africa Recognized Long Possession of Land as a basis of Title, December, 1965, E.A.L.J. Vol.1, No.4, p.243.
34. For the views of the latter two see Land Law Reform in East Africa, op.cit, pp. 10, 44.
35. See Njega, F.X., ibid.
36. Kamba Customary Law, pp.32-34 quoted in Njega, F.X. ibid, p.268.
37. Njega, F.X., ibid.
38. (1921) 3 N.L.R.50.
39. Byagagaire J.M. and Lawrance, C.J.D.: Land Tenure in Uganda (1957), Entebbe, Government Printer, p.17.
40. Kanyeihamba, G.W.: Land Fragmentation, in Land Law Reform, op.cit. p.137.
41. In fact most Bantu groups in East and Central Africa practised Mukago in one form or another.
42. (1960) J.A.A. Vol.XII, No.3, p.135. For a general discussion of Customary Law and Land cases in East Africa. See Maini, K.M.: Land Law in East Africa, 1967, Nairobi, Oxford University Press, pp.1-17.
43. Butagira, Francis, K.: The Mailo Tenure in Buganda in Land Law Reform in East Africa, op.cit., p.44.
44. The 1900 Agreement, Art. 15.
45. Quoted in Njuba, Sam, K. op.cit., p.71.
46. Richards, A.I., Edit.: In Economic Development and Tribal Change, 1954, p.191.
47. Thomas, H.B. and Spencer, A.E.: A History of Uganda Land and Surveys and of The Uganda Land and Survey Development, 1936, Entebbe, Government Printer, p.70; Also see West, ibid p.20.
48. West, ibid, p.109. The word "busuulu" is said to be derived from the Swahili word "Ushuru" introduced into Buganda by Arab Traders. "Ushuru" itself is said to be derived from "ashara" or "ten" indicating tithe. See Roberts, D.W.: The Historical Considerations Contributing to the Soga System of Land Tenure, 1940, Entebbe, Government Printer, p.37. Cf. Richards, A.I.: Economic Development and Tribal Change, op.cit. in West, p.109 where he states that the word is derived from the Luganda word "Kusula" - meaning to stay or live in a place, chapter I, p.127.

49. H.C.C.A. 30 of 1957, unreported.
50. P.C.C.C. 46 of 1954, 1956 C.L.R. 67.
51. Mukwaya, op.cit., pp. 53-65.
52. Haydon, E.S.: Law and Justice in Buganda, 1960, London, Butterworths African Law Series No.2, p.166.
- 52a. P.C.R.O. 3 of 1911.
53. Ibid.
54. This was a misconception of the Situation for Butaka exists today.
55. 5 U.L.R. 97.
- 55a. Uganda Law Reports, 1904-1910, Vol.1, p.121.
56. Hance, op.cit.
57. See, for instance, The Uganda Township Ordinance, Cap. 102, S. 3 (a), (b) and (c).
58. Cap. 117, S. 20.
59. Uganda High Court, civil suit No.232/1969.
60. Op.cit. p.275.
61. Cap. 523.
62. Ibid, p.107.
63. Njuba, ibid, p.63; Lawrance, J.C.D.: A Pilot Scheme for Grant of Land Titles in Uganda, Entebbe, Government Printer.
- 63a. Morris and Read, op.cit., p.338.
64. 1900 Agreement, op.cit. Sch.
65. Crown Lands (Adjudication) Rules, 1958.
- 65a. Nkambo- Mugerwa, ibid, p.109.
66. Crown Land Ordinance, op.cit.
67. See James, R. in Land Law Reform in East Africa, op.cit p.273.
68. 9 E.A.L.R. 102.
69. (1938) 18 K.L.R.5.
70. Cited in Njega, ibid.
71. Proposals of the Tanganyika Government for Land Tenure Reform, Part I, reproduced in Cole and Denison: The British Commonwealth: The Development of its Laws and Constitutions, volume 12, Tanganyika (1964) pp.292.
72. Cap. 117.
73. Land Law Reform in East Africa, op.cit., p.239.
74. Land Law Reform in East Africa, op.cit., p.140.

75. Kenya has continued to follow the same policy, *infra*.
76. The Arusha Conference on African Land Tenure in East and Central Africa, Arusha, Report, 1956, Dar es Salaam, Government Printer.
77. Magala, H. and Magugu, A.K.: Recent Land Reforms in Kenya, Land Law Reform in East Africa, *op.cit.* p. 233.
78. See Ghai and McAuslan, *op.cit.*, p.79.
79. Fox, Storre,: Colonial Papers, no.120 Rhodes House, Oxford University.
80. Nyerere, J., *op.cit.*, n.32.
81. Munoru, G.G.S.: The Concept of Customary Sale of Land Today, Journal of the Denning Law Society, *op.cit.*, p.89.
82. Lawrance, *op.cit.*
83. Kanyeihamba, G.W.: Land Fragmentation in East Africa, Land Law Reform in East Africa, *op.cit.*, p.137.
84. *Ibid.*
85. Orec, S.: Plot Schemes for the Registration of Land Titles in Uganda, Land Law Reform in East Africa, *op.cit.*, p.255.
86. Report of the International Bank for Reconstruction and Development, 1961, Entebbe, Government Printer.
87. The Land Transfer Ordinances, e.g. cap.114 in Uganda.
88. Kenya (Highlands) Order-in-Council, S.R.O. 517.
89. For justification, see Butagira, *ibid*, p.56.
90. *Ibid.*
91. Generally, see Njuba S.K.: Cases and Materials on Land Law in East Africa, *op.cit.*
92. (1960) E.A. 1042.
93. (1957) 2 T.I.R.(R) 309.
94. (1953) 2 T.L.R.(R) 433.
95. (1964) A.C. 142.
96. Njuba, *ibid.*
97. The Possession of Land Law, 1902, para.(c).
98. West, *ibid.*
99. Subject to the restrictions propounded in *Patel v. Registrar of*

- Titles (1949) 16 E.A.C.A. 46.
100. (1967) E.A. 166.
 101. L.N. 142/1961 (Kenya).
 102. Sawyerr Akilagba, G.F.: Discriminatory Restrictions on Private Dispositions to Land in Tanganyika, A Second Look, Land Law Reform in East Africa, op.cit., p.59.
 103. Infra, chapter Five, Advisers.
 104. Ibid.
 105. Proceedings of the Legislative Council, 4.12.1945, Entebbe, Government Printer.
 106. Ibid.
 107. Amodu Tijani v. Secretary, Southern Nigeria, (1921) 2 A.C. 399.
 108. Cited as Gwambi & Others v. Alidina Visram (1913) 5 E.A.L.R. 144 and (1914) 6 E.A.L.R. 31.
 109. E.A.L.R. Vol.5, p.54.
 110. The Land Registry Ordinance, 5.11.
 111. (1948) 16 E.A.C.A. 79.
 112. 5 W.A.C.A.4.
 113. (April 1951) J.A.A. Vol.111, No.2, p.55, et seq.
 114. Bentsi-Enchill (1965) J.A.L.P. 114.
 115. For validity of customary law under English law, see Walker, R.J. and Walker, K.G.: The English Legal System, 1972, London, Butterworths, pp. 44-46.
 116. Cited in Asante's "Interests in Land in the Customary Law of Ghana - A New Appraisal", (1965) 74 Y.L.J. at p. 848.
 117. Native Location, Memo on Native Affairs, Nairobi Municipality Archives, File headed "Native Location - etc., by D. Brummage, Municipal Native Affairs Officers".
 118. KMA Labour 9, 1051 Pass Rule, 8.7.1918.
 119. In his written evidence to the Land Committee appointed in October, 1904, Nairobi Municipality Archives, Native Affairs.
 120. Letter dated 27.2.1933 from a Kenyan commenting on the Land Committee Report, supra, and cited in Corfield: Historical Survey of Mau Mau, Report, 1960, King's College, London University.
 121. On Land and Population in East Africa; The despatch went on,

"The expropriation of land properly farmed by one man in order to hand it over for destruction by others would be not only an act of gross and indefensible injustice, but of egregious folly".

122. S. 36 of the Crown Lands Ordinance (Kenya) provided that "in every case there shall be implied a covenant that he (the European owner of land in the Highlands) shall not, without the consent of the Governor-in-Council, appoint or allow a non-European to be manager of or otherwise occupy or be in control of the land leased." This was effective to bar Africans from acquiring experience in land husbandry.
123. Proceedings of the Legislative Council, 1941, Nairobi, Government Printer.
124. Proceedings of the Legislative Council, see n.123 above.
125. Ibid. One would have thought that this was a good report of African advancement, but apparently for the Africans to be wealthy was detrimental to the interests of white settlers and of Kenya!
126. Mathu, Eliud: The History of Mau Mau, a memo. received by Corfield on 6.9.1958 while writing his Report on the Historical Survey of the Mau Mau. Corfield began his work in 1954.
127. Odhiambo, Atieno: The Rise of the Kenya Peasant, 1888-1922, 1972, Development Trends in Kenya, op.cit., p.27.
128. Furedi, Frank, ibid. p.3.
129. The Land Registry, 1960, Department of Lands and Surveys shows that the bulk of the land in and around Kampala was owned by or registered in names of chiefs.
130. Frantz: The Wretched of the Earth, 1967, Penguin Books, pp. 88-89.
131. Mathu, Eliud: In a speech to the African and Asian Conference, quoted in Corfield Report, op.cit.
132. Kanyeihamba, G.W.: Constitutional Law and Government in Uganda, 1974, Nairobi, East African Literature Bureau, East African Community, chapter one; Van Zwanenberg, R.: History and Theory of Urban Poverty in Nairobi - The Problem of Slum Development, Discussion Paper No.150, Institute of Development Studies, University of Nairobi; Homolon, G.: Capitals of the New Africa, (1964) Economic Geography, Vol.40, pp.239-253.
133. Far-reaching Land law reforms did not begin in earnest until the latter part of the 1960s.
134. 1963, cap. 523.
135. In Uhuru na Umoja, op.cit.; also Friedland, William H. and Rosenberg, Carl, G. Jr.: African Socialism, 1964, Stanford University Press, Appendix 11, p.250.

136. Act. No. 27 of 1965.
137. Also see G.N. Nos. 377, 521, 553 of 1963; Nos. 142 of 1963, and G.N. No. 325 of 1963.
138. Quoted by Lyall Andrew: Consent to Dispositions of Land in Tanzania - Socialism or the Extension of Private Property, (1971) E.A.L. Review, Vol.4, p.247.
139. Lyall Andrew, *ibid*, p.247.
140. This is the view expressed by Ligale A: Urban and Regional Planning in Tanzania - The Role of Urban and Regional Planning, etc. *op.cit*, p.55.
141. Uganda Laws, Rev. Edition, 1964, cap. 201.
142. Proceedings of the National Assembly, Hansard, sess. 1968/69, Entebbe, Government Printer.
143. For the crisis leading to abolition see Mutesa, former Kabaka of Buganda: The Desecration of My Kingdom, 1967, London, Constable.
144. Act 13 of 1963.
145. S.25, as to conditions see ss. 24 and 49.
146. Njuba, *ibid*, p.88.
147. By operation of Act 13 of 1963.
148. S. 17.
149. See, SS. 24 and 53 and Sch. 1, 2 & 3.
150. Magala H. and Magugu, A.K., *ibid*, p.233.
151. Magala H. and Magugu, A.K., *supra*, n. 150 p.235.
152. In 1969 a total area of 944,279 acres had been purchased in the White Highlands.
153. No.47 of 1960; Also see Kottidge and Goldsack: The Million Acre Settlement Scheme 1962-66, 1967, Department of Lands and Settlement, Nairobi, Government Printer.
154. Report of the Director of Land Settlement, 1966, Nairobi, Government Printer, p.43.
155. Magala and Magugu, *ibid*.
156. Ghai and McAuslan, *op.cit*, p.293.
157. Cap. 283 as amended in 1968.
158. Magala and Magugu, *ibid*, p.233.

159. Maini Krishan: The Problems of the Unification of Kenya Land Laws: Land Law Reform in East Africa, op.cit, p.232.
160. Supra.
161. As observed, much of the money available or obtained in Kenya has been spent on 'acquiring' rather than 'developing' land in the Kenya "White Highlands". Uganda has tended to establish cattle-ranches in limited areas mainly for the benefit of the elite-Report of the Ankole Ranching Schemes, 1969/72, Ministry of Planning and Economic Development, Entebbe, Government Printer.

CHAPTER THREE

1. Ibid.
2. For these conditions, see Uganda Townships Ordinance, Cap. 102, S.33.
3. Breese, Gerald: Urbanization in Newly Developing Countries, op.cit. pp. 38-51.
4. Ominde, S.H.: The City of Nairobi: Population Changes and Pattern, 1971, Journal of East African Research and Development, Vol.1, No.1, p.77.
- 4(a) Ibid.
5. Jowett's Dictionary of English Law, 1959, Sweet and Maxwell, 708; Also see Osborn, P.G.: A Concise Law Dictionary, 1964, London, Sweet and Maxwell, p.120.
6. Burmah Oil Co. v. Lord Advocate (1965) A.C. 75, but the decision was nullified retrospectively by the War Damage Act, 1965.
7. Cited in Bentsi-Enchill, K: Ghana Land Law, 1964, London, Sweet and Maxwell, p.285.
8. In Land Law Reform in East Africa, ibid. But also depends on the nature and
9. But also depends on the nature and politics of the local authority and of the people it serves as well as the availability of land. For a general discussion of the different approaches, see Hart, T.: The Comprehensive Development Area, op.cit from p.12.
10. Maini, K.: Land law in East Africa, op.cit, p.137.
11. See Telling, A.E.: Planning Law and Procedure, op.cit, chap.2.
12. Feighel, I.: Nationalization, 1957, Copenhagen, p.19.
13. White, G.: Nationalization of Foreign Property, 1961, London, p.50.
14. Katzarov, K.: The Theory of Nationalization, 1964, The Hague, p.160.
15. The Arusha Declaration, and Tanu's Policy of Socialism and Self-reliance, 1967, Dar es Salaam, Government Printer, p.3.
16. Supra.
17. In the majority of cases, this has been done without form or procedure and without reference to any law whether enacted or decreed. To protect itself from legal action the Military Government issued two decrees, namely, The Proceedings Against The Government (Protection) Decree No.8 of 1972 and The Proceedings Against the Government (Prohibition) Decree No.19 of 1972. For a comment on these decrees, see Uganda Law Focus, Oct., 1972, Kampala, Vol. 1, No.1, p.39.
18. Singh, Chanan: Nationalization of Private Property and Constitutional Clauses Relating to Expropriation and Compensation, June (1971) E.A.L.J. Vol. VII, No.2, p.85.

19. Kiapi, Abraham, in Land Law Reform in East Africa, op.cit, p.151.
20. For Kenya, see Ghai, Y.P.: Independence and Safeguards in Kenya, 1967, 3 E.A.L.J. pp. 177-217; Uganda, Kanyeihamba, G.W.: The Law and the Citizen in Uganda, 1969, Kampala, Law Papers Social Sciences Council Conference, University of East Africa, p. 116; and for Tanzania, Bradley, A.W.: Legal Aspects of the Nationalisations in Tanzania, Sept. (1967) E.A.L.J. Vol.3, No.3, p.149.
21. See Laws of Uganda, 1961, Vol. 1, XXV.
22. The provision is identical to 8.75(1) of the Kenya Constitution.
23. (1970) E.A.543. For a review of this case, see Sempebwa E.F. (1970) 3 E.A.L.J. 282.
24. (1970) E.A.50 (Shah No.4).
25. 25.1.1971.
26. The exceptional circumstances are not defined in the constitution.
27. See Ghai and McAuslan, op.cit. p.421.
28. New Murryu Sisal Estates Ltd. v. Attorney-General, civil case No.320 of 1969, High Court of Kenya.
29. Madhiva & Others v. City Council of Nairobi (1968) E.A. 406; Shah Vershi Devshi, Misc. civil suit No.89 of 1969, High Court of Kenya.
30. Generally, see Johnson, Harry G.:Ed.: Economic Nationalism in Old and New States, 1968, London, Allen & Unwin, pp.1-16.
31. Supra.
32. But this may be true also of Developed Countries, See Walker Gordon, P.C.: Restatement of Liberty, 1951, London, Hutchinson, p.335.
33. Sometimes no land is involved; under the Uganda Preservation of Amenities Act; Cap.31, S.5(1) (b) a local authority may serve a notice on the owner or occupier of any premises requiring him at his own expense, inter alia, to remove any temporary structure which in its opinion is a disfigurement to the neighbourhood.
- 33a Caps. 137 and 345, Uganda Laws, 1964.
34. E.g. Uganda Cap.25, Schedules 1 and 2.
- 34(a) Ibid.
- 34(b) It is later to be argued that ownership per se should not be the subject of compensation, infra, chapter 7.
35. Op.cit.
36. Cap. 105, Uganda Laws, 1951,
37. Cap. 208, Uganda Laws, 1964, Vol. VI, p.3664.

38. Cap. 208, S.1.
39. Cap. 208, S.2.
40. Exercised under the Land Acquisition Act itself or some other law such as Dangerous Drugs Act, Police Act, Public Health Act, Factories Act and the Electricity Act.
41. E.g. Buganda Local Government Councils Laws, 1965, S.53, Entebbe, Government Printer.
42. Proviso in S.53, ref. n.41 supra.
43. (1965) 2 ALL.E.R. 193.
44. 277 App. Div. 407, 100 N.Y. S. 2d. 512 (1950).
45. 54 Wash. 2d, 799, 341 p.2d. 171 (1959).
46. The question was whether a parking facility could be for a public purpose even though not controlled by regulations and though the lessee's power to charge any rates was not limited. Held it was.
- 47 * *see end to itself*
48. Cap. 105, 1951, S. 49(1).
49. For a discussion of this section, see Clarke, H.W.: Administrative Law for Surveying Students, Concise College Texts, 1970, London, Sweet and Maxwell, p.119.
50. For a general analysis, see Hyden, G.: Solidarity and Conflict: Classifying Political Trends in Africa, 1969, Kampala, Social Sciences Council Conference, Political Science Papers, University of East Africa, p.156.
51. Hill, D.H.: Participating in Local Affairs, 1970, London, Penguin Books; Keeble, L.: Town Planning at the Crossroads, 1961, Estates Gazette; Robson, W.A.: The Governors and the Governed, 1964, London, Allen and Unwin.
52. Infra.
53. Crooks, R.J.: Planning for Developing Countries, April 1971, London, Conference paper, sessional meeting, British Town Planning Institute.
54. Infra.
56. For the Nigerian Law of Compensation, see McDowell, C.M.: Compensation for Compulsory Acquisition of Land in Nigeria, 1973, Sheffield Colloquium on Compensation for Expropriation of Land and for "Worsenment," U.K. Committee on Comparative Law, unpublished.
57. Seidman Robert B.: Administrative Law and Legitimacy in Anglophonic Africa, 1969, Kampala, Social Sciences Council Conference papers, University of East Africa, unpublished, p.2.
58. Ejusdem generis rule means that if particular words which refer to members of a class are followed by general words, then it is assumed
- *47. Plaintiffs challenged the constitutionality of declaring the New York "World Trade Center" for a public purpose. Held, that facilitation of flow of commerce and centralization of all activities incidental thereto were for a

that the general words are limited to members of the same class.

59. Clarke, H.W., *ibid*, p.115.
60. Cmd. 2771.
61. New Towns Act, 1946; Part III of the Housing Act, 1957.
62. *Ibid*.
63. Also, see Uganda, Mbarara magisterial area, civil case no. 23 of 1967 and civil case no. 150 of 1968 Kulore magisterial area, unreported.
64. *Supra*.
65. Singh v. Municipal Council of Nairobi (1946) 22(1) K.L.R.8; Kenya Aluminium and Industrial Works Ltd. v. Minister for Agriculture (1961) E.A. 248; Municipal Board of Mombasa v. Kala (1955) 22 E.A.C.A. 319.
66. E.g. S.4 of the Land Acquisition Act, 1965, Uganda.
67. Considering that there is a great deal of illiteracy among landowners in East Africa it is suggested that oral presentation ought to be allowed.
68. (1970) E.A. 429.
69. (1970) E.A. 177.
70. Swahili has been adopted in Tanzania as an official language.
71. *Ibid*, in Land Law Reform in East Africa, *op.cit.*, p. 157.
72. Interview with Mr. Justice Fuad, formerly a judge the Uganda High Court, D.P.P., and Director of the Law Development Centre, Kampala, May 1971. Also see Warioba, J.S.: The Role of Assessors in Criminal Trials in Tanganyika (Dec. 1966) Journal of the Denning Law Society, *op.cit* from p.234.
73. Oberschall, A.: The Challenge of Uganda's 2nd Five Year Development Plan, Kampala, Uganda Press Trust Ltd., p.111.
74. Cited from James R.W.: Compensation for Unexhausted Improvements, (April 1968) Eastern African Law Review, Vol.1, No.1, p.76.
75. Clarke, H.W.; *ibid*, p.125.
76. (1920) 36, L.T. 761.
77. Clarke, H.W., *ibid*, p. 115.
78. *Ibid*.
79. Hagman Donald G.: Urban Planning and Land Development Control Law, *op.cit.*, p.331.

80. Hagman, *ibid*, p.332.
81. 328 U.S. 256 (1946).
82. Hagman, *ibid*.
83. Land Code, R.S.F.S.R. (1922); Also Decree of August 26, 1948; (1948) Vedomosti Verkhovnogo Soveta SSSR, No.36 (535), p.4.
84. Sovetskaia Justitsiia, 1961, No.3, p.27.
85. Headman Mwakilasa v. Kasisi s/o Mwakingwe (1946), App. No.133 to the Governor; Omolowun v. Olokude (1958) W.N.L.R. 130 Cf. Lukas Kaasha v. Mfumwa Sangiwa 11 (1954) Digest No.244, p.2 - Digest of appeals from local courts to the High Court of Tanganyika.
86. *Infra*.
87. Shah v. Attorney General, *op.cit.*, Mwana v. Alli Jongo (1964) Digest 225; Shabani Mnasai v. Mcharo, High Court Digest, Vol.1, No.8 p.5; Muhuri v. Attorney-General, 1964, Crown Case 1021 of 1964, High Court of Kenya, unreported.
88. See Digest, East African Law Reports, 1957-1973 - Compensation.
89. Singh, Chanan, *ibid*, p.93.
90. *Ibid*.
91. *Ibid*.
92. James, R.W.: Some Problems Concerning Leases and Licences, (Sept. 1967) E.A.L.J. Vol.3, No.3, p.218, n.1.
93. (1969) E.A. 444.
94. See no.85 above.
95. See Tanganyika Local Courts Ordinance, S.15(2); Uganda - Order-in-Council, 1902, art.20. For general discussion, see Twining, W.: The Place of Customary Law in the National Legal Systems of East Africa, Lectures delivered at the Chicago Law School in April-May 1963, University of Chicago.
96. *Ibid*, n.85.
97. (1953) 2 T.L.R. 327.
98. (1958) W.N.L.R. 130; Ward: Land Tenure in the Yoruba Provinces, paras. 316-21, cited in East African Law Review, (1968), Vol.1, No.1, p.77.
99. (1936) 13 N.L.11.
100. C.C.R. No.7 of 1959.
101. (1967) C.A.D.A. 160/66.

102. This point is discussed in a later chapter.
103. The word 'prompt' has not been judicially considered in East Africa.
104. For an analysis of these Acts, see Kanywanyi, J.L.: The Harmonisation of Land Systems in East Africa, Land Law Reform in East Africa, op.cit. p.167.
105. This was the position before the military coup d'etat of January 1971.
106. The Tanzanian Constitution does not have entrenched clauses on this matter.
107. Tanzania, cap. 138; Uganda, cap. 523; Kenya, cap. 201.
108. Ibid.
109. Telling, ibid, p.218.
110. Town and Country Planning Act, 1943, S.1.
111. Up till 1973 the Minister had not made any new regulations and those made under the old law continued in operation.
112. Cap. 120 of 1951, S.23.
113. For Kenya, see Land Acquisition Act, 1968 and S.208 of the Constitution; and for Tanzania, see Land Acquisition Act, 1967.
114. E.g. S.18 of the Kenya Act.
115. Cap. 120, S.54.
116. Generally, see McAuslan: Administrative Law in Kenya - A General Survey, 1966, London, East African Law Today, British Institute of International and Comparative Law, series No.5, p.23.
117. (1951) 24(2) K.L.R. 130.
- 117(a) C.D. Patel v. R. (1961) E.A. 79.
118. (1955) 22 E.A.C.A. 319.
119. Telling, ibid, pp.37-38.
120. For instance, the subsidiary legislation of Uganda between 1965 to 15th April 1966 is contained in a volume of more than 2000 pages. English Planning Practice regulations, circulars and illustrative cases amount to the large volumes. See: Encyclopedia of Planning Law and Practice, (England) (ed. Heap. Sir Desmond).
121. Plus the Five Year Development Plans.

122. The matter is further complicated by the fact that sometimes judges disagree as to the meaning of the law and words used in statutes as indicated by dissenting judgments. In *U.S. v. Republic Steel Corporation*, 362 U.S. 482 (1960) the court split five to four on the question whether the word "obstruction" as used in the Rivers and Harbours Act of 1890, prohibited the defendant from unloading industrial deposits in a navigable river, with the result that the depth of the channel was reduced. For other split decisions see *Donoghue v. Stevens*, (1932) A.C. 562, three to two and *Shah v. The Attorney-General*, *ibid*, two to one.
123. On the difficulties of discovering precedent, see Paton and Sawyer in (1947) 63 L.Q.R. 461 and Goodhart (1959) 22 M.L.R. 117.
124. Sawyerr, Akilagpa, G.F.: *Internal Conflict of Laws in East Africa, East African Law and Social Change*, *op.cit*, p.110.
125. (1959) E.A. 1063.
126. (1970) E.A. 429 and 177, respectively.
127. (1948) App. No.1/48, High Court, Tanganyika.
128. (1958) E.A. 779.
- 128(a) (1958) E.A. 795.
129. Telling, *ibid*, chapter 17.
130. Sch. 8.
131. *Ibid*, p.80.
132. (1962) 1 ALL.E.R. 517.
133. (1958) 56 L.G.R. 235, (1958) J.P.L. 665.
134. Buganda Local Government Councils Laws, 1965, p.111.
135. Cf. Part VII of the Town and Country Planning Act, 1971 (U.K.), SS. 147, 148, 149 & sch. 8.
136. Proceedings of the National Assembly, 3rd Series, Vol. 23, p. 971.
137. *Ndegwa v. President and Members of the Nairobi Liquor Licensing Court*, (1957) E.A.C.A. 709.
138. *Ex parte, A Building Society* (1960) 2 ALL.E.R. 549, *The "Times"*, April 29, 1960.
139. (1915) A.C. 20.
140. (1948) 1 K.B. 721, (1948) 1 ALL.E.R. 564.
141. *Cooper v. Wilson* (2) (1937) 2 K.B. 309.
142. (1960) E.A. 808.

143. Sevareid, Peter: An Introduction to Administrative Law in Kenya, 1969, Nairobi, Government Printer.
144. (1946) App. Cas. No. 117 to the Governor, Tanganyika, p.10.
145. (1948) App. No. 1/48 to the Governor, Tanganyika.
146. (1966) E.A. 564.
147. (1951) App. No. 13/50 to the Governor, Tanganyika.
148. C.O.R. No. 7 of 1959, *ibid*.
149. (1965) P.C.C.A. 38/65, Moshi District.
150. (1962) L.C.C.A. 23/1962.
151. (1964) Digest 225.
152. (1968) E.A. 555.
153. High Court, Civil Case No. 320 of 1969.
154. S.3 authorised the Minister to acquire land compulsorily "if satisfied that the need is likely to arise".
155. March, (1972) E.A.L.J. Vol. III, No.1, pp. 65-67.
156. The amount of compensation affects development projects, *infra*.
157. Answers to questionnaires issued for the purpose of this study.
158. See n. 157 above.
159. E.A.R. & H., Administration (General Manager) v. Arusha Town Council, (1966) E.A. 358.
160. Courts have resorted to Indian judicial precedents, *infra*.
161. (1968) E.A. 555.
162. From p. 561.
163. *Ibid*.
164. Landlord and Tenant (Shops and Hotels) (Temporary Provisions) Ordinance, 1954.
165. At pp. 270 and 278.
166. (1958) E.A. at 784.
167. (1836) 4 Ad. & El. 650.
168. Charlesworth, J.: The Principles of Planning Law, 1948, London, Stevens and Sons, pp. 89 and 92.

169. Ssekandi, F.M., *infra*.
170. (1957) E.A.125.
171. Briggs, J.A., at p. 129; Two Indian Cases, *Biraba Narayan v. Collector*, 39 I.C.14 and *Frenchman v. Collector*, 24 Bom. L.R.782, were cited.
172. Hart, J., *ibid*.
173. E.g. The compulsory acquisition of the Katalamwa Estate by Makerere University, Kampala, 1967/8.
174. In an interview with a Land officer, Nov. 1973, Department of Lands and Surveys, Kampala; name withheld by request.
175. See, Report of the Kigezi Pilot Scheme, 1956/8, Entebbe, Government Printer.
176. (1968) E.A. 555.
177. (1968) E.A. at p. 557 per Spry, J.A.
178. The overwhelming number of the residents in the peri-urban areas live under subsistence agricultural level.
179. Parrier, David and McAuslan, J.P.W.B.: Some Thoughts on the Evolution of the Concept and Practice of Compensation, a paper presented at Sheffield Colloquium on Compensation for Expropriation of Land and for "Worsenment", 1973, University of Sheffield.
180. Telling, *op.cit*, from p.295.

CHAPTER FOUR

1. The proceedings of the Seminar were published in 1969 under the title "Land Law Reform in East Africa" at the Adult Centre, Kampala. The Seminar was attended by University lecturers, planners, sociologists, surveyors and Government administrators and officials throughout East Africa and the papers included in the publication are representative of the groups who participated in the Seminar.
2. See Obol-Ochola, James, ed.; in the Introduction, *ibid.*
3. In the sense that the litigant, a possible developer, is likely to spend some of his money on litigation costs and expenses.
- 3(a) A considerable part of the money required for urban development belongs to foreign investors who may not wish to wait until the prolonged planning process is completed.
4. *Ibid.*
5. Apthorpe, Raymond: Land Law and Land Policy in Eastern Africa, Land Law Reform in East Africa, *op.cit.* p. 118; World Bank: The Economic Development of Uganda, 1961, Entebbe, Government Printer, p. 187.
6. E.g. West, H.M.: The Mailo System in Buganda, Entebbe, Government Printer, p.57; Munoru, G.G.S.: The Concept of Customary Sale of Land Today, Journal of the Denning Law Society, University of Dar es Salaam, Dec. 1966, Vol. 1, Nos. 1-4, p. 89; James, R.W.: Compensation for Unexhausted Improvements, Eastern Africa Law Review, April 1968, Vol. 1, No. 1, p. 76.
7. This appears to be the official policy of the Kenya Government, *ibid.*
8. Reports on Uganda (1961), Kenya (1962) and Tanganyika (1960) respective Government Printers, Entebbe, Nairobi and Dar es Salaam.
9. *Ibid.*
10. See Kate, E.M.S.: The relevance and Implication of Land Tenure to Urban Development in Uganda, Land Law Reform in East Africa, *op.cit.* p. 297. The author was at the time Permanent Secretary to the Ministry of Regional Administrations.
11. This used to be one of the economic arguments against the restrictions imposed on the transfer of African lands to non-Africans. For the statutory provisions, see, Uganda, cap. 202 - Land Transfer Act; Tanganyika, cap. 114, Land C(Law of Property and Conveyancing) Ordinance, supplement 1964; and Kenya, Act 28 of 1959, Land Control (Native Lands) Act.
12. One of the rights of a legal mortgagee is to foreclose and this would be impossible where there is a restriction on the disposition of the land.
14. Kampala Development Plan, Revised Draft, Structure Report, April 1972 .
Kampala City Council.

15. When Johnston completed his land settlement in Uganda he wrote that "the object was a practical attempt to establish on a sound basis, a ruling oligarchy which, under British guidance, might do for Buganda what the landed aristocracy had done to give stability to the Government of England": see Johnston's General Report on Uganda of 10.7.1901, Entebbe, Government Printer. Also see Nyerere, J.: *Mali ya Taifa in Uhuru na Umoja, A Selection from Writings and Speeches*, 1952-65, 1969, p. 58.
16. Chango Machyo: *Land Tenure and Economic Development*, op.cit. p. 96.
17. Chango Machyo, *ibid.*
18. *Ibid.*
19. See Mukwaya, *ibid.*
20. Thomas, H.B.: *The Surveyor and the Politician: An African Object - Lesson*, (1933) *Empire Survey Review*, Vol. 2, pp. 28-32.
21. (1921) A.C. 399.
22. *Ibid.*
23. This point is argued in a later chapter, *infra*.
24. *Proceedings of the Legislative Council*, 1945 sess. Also, see Ghai and McAuslan, op.cit. p. 115.
25. Former Governor General of Tanganyika.
26. *Proceedings of the Legislative Council* sess. 4.12.1945.
27. Thomas and Scott, op.cit. p. 272.
28. Busia, Prof. in *International Social Science Bulletin*, Vol. VIII, pp. 413-12.
29. *Ibid*, p. 101.
30. *Ibid*, p. 125.
31. Land Registry, Department of Lands and Surveys, Kampala.
32. *Investigation of Land Buying Activities in Nairobi Squatter Settlements*, op.cit., Also, Ikama, J.: *Urban Development Policies and Planning experience in Tanzania: The Role of Urban and Regional Planning in National Development in East Africa*, p. 196.
33. *Ibid.*
34. Wrigley, C.C.: *Crops and Wealth in Uganda*, *East African Studies* No. 12; *East African Institute of Social Research*, 1959, Kampala, p. 54; Apter, D.S.: *The Political Kingdom in Uganda*, 1961, Princeton, p. 187.
35. Thomas and Scott, op.cit.

36. Thomas, H.B.: An Experiment in African Native Land Settlement, Journal of the Royal African Society, (1927-1928) Vol. 27, pp. 234-248; Ghai and McAuslan, op.cit. p. 111; Lands Commission Report, 1947. Arusha-Moshi, 1947, Dar es Salaam, Government Printer, p.5.
37. The Common Man's Charter: Proposals for Document No. 1 on "the Move to the Left", Kampala, Consolidated Printers, para.38.
38. Ghai and McAuslan, op.cit. p. 124.
39. Saul, J.S.: The Socio-Political Context, Towards Socialist Planning, Tanzanian Studies No.1, 1972, Dar es Salaam, Tanzania Publishing House.
40. Thomas, P.A. Ed.: Private Enterprise and the East African Company, 1969, Dar es Salaam, Tanzania Publishing House, especially articles by Arkadie, p. 156, Kalema, p. 174, Hboya, p. 195 and Roe, p. 229. Also see the abstract economic statistics contained in each of the East African National Development Plans, ibid.
41. The Minister's power under the Act is discretionary.
42. (1957) E.A. 101.
43. Kate, ibid.
44. Apthorpe, ibid, p. 118.
45. Pogucki, R.J.H.: Some Problems of Land Tenure Legislation and of Development: A General Introduction to a Discussion at the Seminar on Problems of Land Tenure in African Development, Dec. 1971, Leiden, p.2.
46. Uhuru na Umoja, op.cit. p.37.
47. Supra.
48. For customary notions of land ownership, see Kato, L.L.: Has Customary Law in English Speaking Africa Recognised Long Possession of Land as a Basis of Title, (Dec. 1965) E.A.L.J. Vol.1, No.4. p.243; and Obol-Ochola in Land Law Reform in East Africa, op.cit.
49. McAuslan, J.P.W.B.: Control of Land and Agricultural Development in Kenya and Tanzania, East African Law and Social Change, op.cit, p.172.
50. For comments on this policy, see Cliffe, Lionel: Challenge to Tanzanians, (March 1967) East African Journal and Svendsen, Knud Erik: Socialism Problems after the Arusha Declaration, (May 1967) East African Journal.
51. Kibaki, Iwai, Minister of Finance and Planning, writing in the "Guardian", u.9.1973.
52. Current Five Year Development Plan, ibid.
53. "Guardian", 22.8.1973.

54. The Common Man's Charter, op.cit.
55. Op.cit. para.39.
56. In 1969, a research officer in the President's Office investigated private property of Ministers and senior public officials in Uganda. The Government suppressed the publication of his report. Also, see the 18 points of the Army after the coup d'etat in the "Birth of the Second Republic", op.cit.
57. Leys, Colin: The limits of African capitalism: The Formation of the Monopolistic Petty-Bourgeoisie in Kenya, Developmental Trends in Kenya, op.cit., p.1.
58. The Common Man's Charter, op.cit. para 33.
59. Eighteen points, n.56, ibid.
60. The new proprietors have tended to be army officers, their relations and friends. See Ravenhill, F.J.: Political Change in Uganda since the 1971 Coup, Canadian Association of African Studies Conference, Feb.-March, 1974, Dalhousie University, pp. 17-19.
61. Ikama, ibid.
62. See the proposals contained in "The Role of Urban and Regional Planning in National Development of East Africa, op.cit. from p.251.
63. Ibid.
64. Ibid.
65. See Mohiddin's comment on the objections and objectors to this policy, ibid.
66. Ibid.
67. In an interview with assistant Registrar, Department of Lands and Surveys, October, 1973, Kampala.
68. In a survey of land cases before and after the coming into force of the Act in the Ankole-Kigezi Magisterial area, 1969-1971, carried out by the author in connection with his materials for the "Law, the State and the Individual" in Uganda, op.cit.
69. Ibid.
70. Interview with Tribe, M.A. The interviewee, an economist, having carried out considerable research in this field, ibid.
71. Op.cit.
72. Allen Report, para. 176.
73. Ibid.

74. Allen Report, op.cit.
75. E.g. Land Acquisition Act, supra.
76. Ibid.
77. Leaning, ibid.
78. Clinard, Marshall, B.: Poverty, Development and Deviance, Social Sciences Council Conference, Sociology Papers, 1969, University of East Africa, Kampala, p.8.
79. E.g. Cap. 70 of Uganda Laws, 1964.
80. For a simplified analysis of this law, see Blundell, Lionel, A. and Dobry, George: Planning Appeals and Inquiries, 1970, London, Sweet and Maxwell, Although the learned authors describe the pre-1971 legislation, it is similar to the present law, see Telling, A.E.: Planning Law and Procedure, (1973), ibid, pp. 36, 38-42, 122-124, 135, 137 and 162-163.
81. Infra.
82. In Van Arkadie, Brian: Financing African Development, African Survey, Europa Publications. Also see Jolly, Richard, ed.: Employment, Incomes and Equality, Report of UNDP/ILO, Employment Mission to Kenya, 1972, ILO, Geneva; Small-Scale Industries in the Least Developed Countries, 1971, UNIDO Meeting Report, Vienna; A New Approach to the Problems of the Dual Society in Developing Countries, (1971) International Social Development Review, No.3; Steele, David: Wages, Employment, Output and Consumption in Kenya, Institute for Development Studies, University of Nairobi, a discussion paper.
83. Responses to questionnaires issued in 1973 by the author to East African Planners and administrators. see appendix.
84. E.g. when he has spent time and money preparing the land on the assumption that permission will be granted or where he cannot carry out similar developments elsewhere.
85. This point is examined fully in the next chapter.
86. See Clarke, H.W.: Administrative Law for Surveying Students, op.cit. from p.93.
87. E.g. Where the owner or occupier is a salaried employee with little opportunity to develop alternative land or where the acquired 'improvements' depended on services such as roads, water supply and electricity and the new land is devoid of similar services.

CHAPTER FIVE

1. All the authorities discussed or cited in this study stress the points of manpower and administrative machinery
2. Walsh, Ann marie, Hanck: The Urban Challenge to Government: An International Comparison of Thirteen Cities, Institute of Public Administration, New York, Frederick A. Praeger, p.14
3. Report of Working Group II: The Role of Urban and Regional Planning in National Development of East Africa, op. cit. p.23
4. Problems of Foreign Aid: A Conference Report, 1965, Institute of Public Administration, Dar es Salaam, chapters III and IV
- 5.
6. Walsh, ibid. n.2, p.17
7. Kenya Constitution, s.17. There are similar provisions in the Tanzanian Interim Constitution and the Uganda Constitution of 1967, now in abeyance as the result of military coup d'etat in January, 1971
8. Infra
9. Odongo, John in The Role of Urban and Regional Planning, etc, op.cit. pp. 46 - 48
10. The change from Local Government to Local Administrations in Uganda was effected by the 1967 constitution. In Kenya the Town Planning Department which is responsible for physical planning is in the Ministry of Lands and Settlement
11. Eg. s.18 of the Kenya Constitution. Similar powers exist in the other two constitutions.
12. These powers may be delegated to subordinate authorities such as the Land Commissions, Local Authorities and Local planning committees, infra
13. Eg. under caps. 318 of Kenya, 523 of Tanzania and 201 of Uganda respectively
14. Generally, see Kanywanyi, J.L.,: The Harmonisation of Land Systems in East Africa, Land Law Reform in East Africa, op.cit. p.167
15. Uganda, Public Land Act 13 of 1969; Kenya, Land Control Act 34 of 1967 and Tanzania, cap. 523
16. Eg. Uganda Laws, 1951, cap. 102
17. This power is usually exercised by local authorities, see The Municipal Council of Dar es Salaam v Joao Franco Paes [1957] E.A. 729, re cap. 283 of Tanganyika
18. Cap. 134 of Kenya Laws; Cap. 30 of Uganda Laws. and the Town and Country Planning Ordinance of 1956 Tanganyika
19. Infra
20. Kasfir, N.,: Political Problems in Planning, (1967/68) Makerere Political Review, Makerere Political Society, Kampala, Vol. 1 No. 1. p. 1
- *5. Problems of Foreign Aid, ibid, chapters III and IV

21. Hather, J.R.,: Making the Master Plan for Kampala, Perspectives on Urban Planning for Uganda, op.cit. p. 33
22. McAuslan, J.P.W.B.,: Control of Land and Agricultural Development in Kenya and Tanzania, East African Law and Social Change, op.cit. pp. 172 - 173
23. Republic of Kenya: Sessional Paper No. 5 of 1966/67: Housing Policy for Kenya, Nairobi, Government Printer
24. Generally, see Bradley, A.W.,: Legal Aspects of the Nationalisations in Tanzania (Sept. 1967) E.A.L.J., Vol. 3 No. 3 p. 149
25. Ibid
26. Nyerere, J.,: Conscience of a Legislator, quoted in Bradley's Administrative Law in East Africa, Teaching materials, 67/7, Faculty of Law, University of Dar es Salaam
27. Ibid
28. Op.cit. p. 15
29. Ibid
30. Kendall, ibid, p. 21
31. Kendall, ibid
32. See The Role of Urban and Regional Planning, etc, op.cit. papers at 173, 182 and 187
33. Ibid
34. Ibid
35. Infra
36. Lukwiya, R.,: Regional and Rural Planning - Practice and Possibilities in Uganda, The Role of Urban and Regional Planning, op.cit. p. 37
37. Lukwiya, ibid
38. Lukwiya, ibid
39. Urban and Regional Planning, etc, op.cit. p. 38
40. Brown, David S.,: The Key to Self-Help: Improving the Administrative Capacities of Aid-Receiving Countries, (June, 1964) Public Administrative Review, vol. XXIV, no. 2
41. Republic of Kenya: Development Plan, 1970 - 1974, Nairobi, Government Printer, Entebbe para. 2.9
42. Hogsbro, S.,: Urban Development Policies and Urban Planning Experience in Kenya, II, The Role of Urban and Regional Planning, etc. op.cit. p.187
43. Hogsbro, ibid.

44. Mkondya, C.B.,: Urban and Regional Planning in Tanzania, The Role of Urban and Regional Planning, etc. op.cit. p. 77
45. Mkondya, *ibid*, p. 77. Also see Bienen, Henry: The Role of Tanu and the Five Year Plan in Tanganyika, (Jan. 1965) Dar es Salaam, East African Institute of Social Research, Conference Paper
46. Mkama, *ibid*, p. 201
47. Mkama, *ibid*, p. 201
48. Tanzania: Second Five Year Plan, 1970, Dar es Salaam, Part III
49. Mkondya, *ibid*
50. For a general examination of Local Authorities in East Africa, see Burke, Fred G.,: Local Government and Politics in Uganda, 1964, Syracuse University Press, Diejomach, *ibid*., Lury, D.A.: Local Government in Kenya: Income and Expenditure, 1959 - 1961, Discussion Paper No. 15, October 1965, Institute for Development Studies, University of Nairobi; Dryden, Stanley: Local Administration in Tanzania, Political Studies No. 5 1968, Nairobi, East African Publishing House
51. These cover larger areas than urban authorities and were originally modelled on the English County Councils
52. Paul, James C.N. and Clapham, Christopher: Ethiopian Constitutional Development, 1967, Addis Ababa, Oxford University Press, p. 52
53. Mill, J.S.,: Considerations on Representative Government, 3rd ed. 1865, cf. His Dissertations and Discussions in Goldwin, Robert A. and Lerner, Ralph and Sourzh, Gerald, (eds.): Readings in World Politics, 1959, New York, Oxford Press, p. 325
54. Harvey, J. and Bather, L.,: The British Constitution and the ^{introduction} Commonwealth 1972, London, McMillan & Co.; and Dicey, A.U. (~~ed.~~ ^{Wade}. E.C.S.): An Introduction to the Study of the Law of the Constitution, 1965, London, McMillan & Co. Ltd. from p. 87
55. See Allen's Commission Report, op.cit.
56. *Infra*
57. N.50 above
58. Even though at the time there was no law establishing a one-party state
59. U.P.C. Election Proposals, "Uganda Argus", 17.7.1970
60. Gutteridge, William: Military Interventions in Black Africa, (Sept. 1972) East Africa Journal, Vol. 9. No. 9 p. 14
61. Decree No.8 of 1971
62. Birch, A.H.,: Opportunities and Problems of Federation, Proceedings of the Nairobi Conference, Nairobi, pp 3 - 5

63. Cliffe, Lionel, (ed.): Selections from One Party Democracy, 1967, Nairobi, East African Publishing House; Mazrui, Ali, A.,: On Heroes and Uhuru-Worship: Essays on Independent Africa, second impressions, 1970, London, Longmans, p. 87
64. Mbambara-Mukombe, Secretary General, Kigezi Administration: Discussion with Uganda students in Britain, June 1965, London
65. Local Administrations Act, 1967
66. Part II, Local Administrations Act, 1967
67. Ss. 27 and 79 of the Local Administrations Act, 1967
68. Brownwood, David O.,: Limitations on the Exercise of Power by Statutory Local Authorities (March-June 1968) 4 E.A.L.J. 21; Hannigan, St. J.A.,: Some Aspects of Local Government in Kenya, East African Law Today, op.cit. p. 96
69. Eg. Uganda, Local Administrations Act, 1967, Part II
70. See cap. 27 of Uganda Laws, 1964
71. Uganda, 1962 - 1964, Entebbe, Government Printer, p. 221
72. Infra
73. The Role of Urban and Regional Planning, etc, op.cit. pp 44, 178, 189 and 204
74. Proposals for Local Government Reform in Kenya, Discussion Paper No. 31. Sept. 1966, Institute for Development Studies, University of Nairobi
75. Hannigan, ibid
76. Discussion Paper No. 31, n.74, ibid, from p. 3
77. Burke, ibid
78. See the studies cited in n.50, ibid
79. Ibid
80. Ibid
81. See n.74 above
82. Both Burke and Discussion Paper No. 31 ibid., make this point
83. Ibid
84. Ibid
85. Ocaya Lakidi, (ed.): Perspectives on Politics and Government in Uganda, Political Science, 1972, Makerere University, Kampala, Vol. 1
86. The Birth of the Second Republic, op.cit. p.6; Ibingira, G.S, Proceedings of the National Assembly, 2nd series, Vol. 17, (1962-63), Parliamentary Building, Kampala; Kiwanuka v Obote, civil case no. 315 of 1965 (4), Uganda High Court; Kenya National Assembly, Sixth Sess. Vol. XIII 1,11,1968 - motion for the day

87. Eg. exchange of letters between the D.C. Kigezi and the P.C. Western Province, 30.10.1967 and 3.1.1968 - confidential files, Kigezi Administration and Mombasa District, Annual Report, 1962, p.4
88. S.34, Kenya Constitution
89. Burke, *ibid.*; Discussion Paper No. 31, Institute for Development Studies, *op.cit*
90. See Hannigan and Dryden, *ibid*
91. *Ibid*
92. *Infra*
93. *Ibid*
94. Ddamba, K.,: Urban Development Policies and Planning Experience - Uganda, The Role of Urban and Regional Planning, etc. *op.cit.* at p.178
95. Eg. Hannigan and Dryden, *ibid*
96. Allen Commission Report, re Kampala City Council Affairs, *op.cit.*; Tanzania Government: Report of the Presidential Commission on the Establishment of a Democratic One Party State, 1965, Dar es Salaam, Government Printer; Huntington, Samuel: Political Development and Political Decay (April, 1965) World Politics
97. Interviews with elders of the Batoro and Acholi while the author was doing research for his "Constitutional Law and Government in Uganda", *op.cit*
98. The first currency to be introduced in East Africa was the Indian 'rupee', known locally as the 'Rupiha' or 'Rupiya'
99. See Ruharo Rules for the Western Province of Uganda for the year 1939, Uganda Gazette, Entebbe, Government Printer
100. S.5(2), Uganda Laws
101. See letter of the Ag. Provincial Commissioner, Western Province to the Hon. Chief Secretary - Uganda Government pointing out the comparisons between forced labour in Uganda and the labour conditions of Russia reported in the 'Times' of 7.8.1930 (p.10), Conf/Files/Lab/Cabinet office, Entebbe
102. *Ibid*
103. See Burke, Dryden and Hannigan, *ibid*
104. Annual Budgets. Local Administrations, Ministry of Finance, Kampala

105. Local Government and Local Administrations Acts, ibid
106. As to the authorisation by Parliament, see Financial Provisions in the Respective Constitutions, eg, Kenya, chapter VII of the Constitution
107. Cited in Dryden, ibid
108. Auditor-General, Accounts Report, May 1968, Entebbe, Government Printer
109. These figures are cited from Hannigan, ibid
110. Diejomaoh, ibid
111. Ibid
112. Due, ibid
113. Ibid
114. Diejomaoh, ibid
115. Diejomoah, ibid
116. Kaufman, Herbert: Organization Theory and Political Theory (March 1964) American Political Science Review, LVIII, No. 1; Banfield, Edward: Political Influence, 1961, New York, The Free Press of Glencoe; Wilson, James: City Politics. 1963, Harvard University Press
117. Statistical Abstracts, 1954 - 1967, Nairobi, East African Community
118. Government of Tanganyika: Survey of High Level Manpower Requirements, Dar es Salaam, Government Printer; Van Arkadie, B. and Ndegwa, P.,: Future Trade, Balance of Payments and Aid Requirements of East Africa, 1963, Kampala, East African Institute of Social Research; Hunter, Guy: Education for a Developing Region, 1963, London, p.53; Jolly, A.R.,: The Manpower Issues in East Africa, Problems of Foreign Aid, op.cit. from p. 237
119. Ibid
120. Ministry of Education, Higher Education Files (Tech/Ed), 1957 and 1959, Kampala
121. Interview with six students who left Kyambogo and secured places at the Portsmouth College of Technology (Engineering Department) 1961 - 63, Portsmouth
122. Since 1968 each territory has established a University of its own with engineering or technology departments
123. For general discussion, see U.N. Department of Economic and Social Affairs - Decentralisation for National and Local Development, UN.ST/IAO/M/19/1962 and Keith, Lucas, Bryan: The Dilemma of Local Government in Africa in Robinson, Kenneth E. and Madden, Frederick, (eds.): Essays in Imperial Government, 1963, New York, Humanities Press

124. Civil Service List of the respective countries, *ibid*
125. Leys, Colin, *ibid*
126. The Proceedings Reports of Expatriate Teams which have been responsible for the planning and development of East Africa show little consultations with local personnel, *ibid*
127. Compare appointees before or immediately after independence and subsequent appointees in the Civil Service Lists, *ibid*. The former include less graduates and tend to hold more responsible positions while the latter have more graduates and often hold junior posts
128. Anyulu, Abudalla, in an interview with a panel on Uganda T.V. 12.5.1969. The interviewee was at the time the chairman of the Public Service Commission, and was answering a question as to why the Commission did not appoint many of the newly qualified graduates of the East African Universities
129. See Southall, Aidan, (ed.): Social Change in Modern Africa, *op.cit.* p.145. Among Ugandans may be mentioned 4 administrators and 2 economists with the U.N. specialised agencies, one in the ILO Regional Headquarters, Lusaka and 4 engineers, 2 doctors and three lawyers presently practising in the United Kingdom, two lawyers in the U.S.A. All left for "lack of opportunities at home." These numbers have increased since the coup d'etat of 1971
130. Skorov, George: External Aid to Education, Problems of Foreign Aid, *ibid*. p.228; Tobias, George: Problems of International Financing Education, April 1964, Bangkok, a UNESCO Seminar on Investment in Education; Final Report, Conference of African States on the Development of Education in Africa, May 15 - 25, 1961, Addis Ababa, p.24
131. UN Papers /E/CN/14/Cap 2/INF/22, original in English, p.13
132. Civil Service List, *ibid*
133. Muench, L.H.: Planning for Planning Education in Tropical Africa, Perspectives on Urban Planning for Uganda, *op.cit.* p.130
134. Ohas, J.M.,: Urban Development Policies and Urban Planning Experience in Kenya - I., The Role of Urban and Regional Planning, etc, *op.cit.* p.182
135. Cook, David: Nairobi: Some Solutions to Problems of Urban Growth, The Role of Urban and Regional Planning, etc., *op.cit.* p.218
136. Ohas, *ibid*, p.182
137. *Ibid*, p.183
138. National Capital, Master Plan, Dar es Salaam, June 1968, URT p.51
139. See n.138 above, p.52
140. Muthiora, Johnstone: The Human Element in Town and Village Planning, Sociology Papers, University of East Africa, Social Sciences Council Conference, 1969, Kampala, Vol. II, p.33; Steel, R.W.,: The Towns of Tropical Africa, Essays on African Population, 1962, New York, Frederick A. Praeger, pp. 249, 278 and 279 - 301

141. Leys, Colin: The Role of the Universities in an Underdeveloped Country, (1969) Mawazo, Makerere University, Vol. 2. No. 1. p.29
142. Muthiora, *ibid*
143. Leys, Colin, *ibid*
144. In Perspectives on Urban Planning for Uganda, *op.cit.* p.130
145. *Ibid*
146. Allen Commission Report, *op.cit*
147. See Kiapi, Abraham, *infra* chapter 8 - Inquiries and Tribunals
148. *Ibid*
149. Cf. Uganda Public Service Commission Regulations, R.17
150. *Ibid*
151. *Ibid*
152. Allen Commission Report, *op.cit.* Part II, Recommendations
153. Dr. Obote, ex President of Uganda in a speech to Makerere graduates. Graduation Ceremony, May 1969
154. Uganda Government: Public Service Commission Regulations, 1962 as amended, Public Service, Kampala
155. The Allen Commission Report, *ibid*
156. *Ibid*
157. Kiapi, Abraham: Legal Control of Official Corruption in East Africa, 1969, Law Papers, University of East Africa Social Sciences Council Conference, p.153
158. Kiapi, *ibid*
159. *Infra*
160. Kadowe, Buwaya: Problems of National-Building, (1967/68) Makerere Political Review, Vol. 1. No. 1. pp 39 - 51, also Friedland and Rosberg, (eds.): African Socialism, *op.cit.*, and Saul, J.S.,: Planning for Socialism in Tanzania: The Socio-Political Context, Towards Socialist Planning, Tanzanian Studies No. 1, 1972, Dar es Salaam, Tanzania Publishing House
161. Mwongozo: Tanu Guidelines, National Executive Committee of the Party, 1971, Dar es Salaam, paras. 11, 12, 14, 24 and 33
162. Saul. *ibid.* at p.5
163. Abrams. Charles: Urban Land Problems and Policies, (1953) Housing and Town and County Planning Bulletin, U.N., New York and Walsh, *ibid.*, The thirteen cities studied were, Calcutta, Casablanca, Davao, Karachi, Lagos, Leningrad, Lima, Lodz, Paris, Stockholm, Toronto, Valencia and Zagreb

164. Abrams, *ibid*
165. Epstein, A.L.,: Politics in an Urban African Community, 1958, Manchester University Press; Smith, David N.,: Man and Law in Urban Africa - A Role for Customary Courts in the Urbanization Process, 1972, New York, International Legal Center, a Conference paper
166. *Ibid*
167. Gott, Richard in the "Guardian", 18.10.1972
168. E.g. Uganda's Common Man's Charter, Kenya's Sessional Paper No. 10 and Tanzania's Arusha Declaration, *op.cit*
169. Kanyeihamba, G.W.,: The Influence of Expatriate Advisers on African Development, Conference Paper, Canadian African Studies Association, Feb. 28 - March 3, 1974
170. Gardiner, Robert, K.A.,: Research for Economic and Social Development in Africa, (June 1968) Mawazo, Makerere University Kampala, Vol. 3 No. 3, paper originally delivered at the 2nd International Congress of Africanists, Dec. 1967, Dakar
171. The Governments attach great importance on National Research Councils that they are controlled directly from the President's office
172. Sponsored by the Uganda National Research Council
173. Annual Report, 1972/73, President's Office, Kampala
174. Epstein, *ibid*
175. For useful bibliographies, see African Socialism, *op.cit.*, from p.301. Social change in Modern Africa, *op.cit.*, at end of each article; politics of integration, *op.cit.* from p.341; The Mailo System in Buganda, *op.cit.* Appendix C. from p.176 and Bibliographies provided by the various issues of the following Eastern Africa Law Review, Journal of African Law and East African Law Journal. For the rest see bibliography, *infra*
176. Because most departments of the African Universities do not as yet have adequate numbers of staff to supervise higher degrees, scholars therein are usually supervised by professors in Universities of the developed countries. As to who has or is doing research in East Africa, see the Institute for Development Studies, Research and Publications, University of Nairobi, January 1972 and the Boards of Graduate Studies at both Makerere and Dar es Salaam Universities
177. In 1969, Miss V. Chane registered with the Department of Political Science at Makerere University to undertake research on the state of women in the Moslem communities of Mombasa. After staying with them for three months she returned to the department to report that the women had been most unco-operative and had refused to answer her questions. Apparently she had gone dressed up in skirts and often trousers. She was advised to wear a veil - the traditional head dress of coastal women - and go back. This she did and found that the women responded to her questions.
- 167a. Burkhard, J.,: Micro-biological Research and Training, paper presented at 2nd International Conference on Global Impacts of Applied Microbiology, Nov. 1967, Addis Ababa.

178. The researcher was a citizen of the U.S.A.
179. University of Dar es Salaam
180. E.g. Sawyerr, F.G.A.,: Review of "The Conflict of Laws in Ethiopia, (Dec. 1965) E.A.L.J. Vol. 1. No. 4 at p.315 where he says, "all this makes urgent the study of the conflict of laws in an African setting. Enough of the citation of foreign texts without analysis and without relation to the specific local conditions!" Also see, (Dec. 1967) E.A.L.J. Vol. 3, No. 4 and 354; (Sept. 1970) E.A.L.J. Vol. VI, No. 3 p.239; and for favourable comment of (June, 1971) E.A.L.J. Vol. VII, No. 2 p.180
181. A note to the Minister of Finance Confidential Files, F.C. 3063, letter of 15.12.1963, Kampala; also see Helleiner, G.K.,: Socialism and Economic Development in Tanzania (Jan. 1972) Journal of Development Studies, Vol. 8 No. 2
182. "Uganda Argus", 10.7.1968 and "The People", 3.8.1968
183. Thomson, Hugh, H.,: Some Human Aspects of Manpower Planning in Developing Countries (April, 1972) Journal of Administration Overseas, Vol XI, No. 2. p.101
184. E.g. The Visitation Committee to Makerere University College, Report, June 1970; (The Report formed the basis of the Makerere University, Kampala Act, 1970), Entebbe Government Printer
185. Annual Reports: Graduate Boards, Universities of Makerere, Kampala and Dar es Salaam and Nairobi, 1969 - 1973
186. The council's forms ask such details as nationality of the researcher and of his or her parents, how long he intends to stay in East Africa, etc
187. In Land Law Reform in East Africa, op.cit. p.16
188. ^T Ibid ~~Hast.~~ op.cit. p.52
189. Mafeje, Archie in (1972) East Africa Journal, Vol 9 No. 2
190. Ibid
191. Gitelson, S.A.,: U.N. Development Programme Assistance to Uganda, Political Science Papers, 1969, Makerere Institute of Social Research, pp 121 - 122
192. Ghai, Y.P.,: Research on Law and Development in Africa, Conference Paper, (1972) New York, International Legal Center
193. Ibid
194. Ibid. see n. 189 above
195. Epstein, A.L.,: Urbanization and Social Change in Africa in Breese, G. (ed.),: The City in Newly Developing Countries, 1969, New York, Prentice-Hall, Inc. Englewood Cliffs, p.246

196. Ibid., in *Housing in the Modern World*, op.cit. chapter 16
197. McAuslan, J.P.W.B.,: Aspects of Urban Land Law with Special Reference to East Africa, seminar paper, Problems of Land Tenure in African Development, Leiden, ibid. p.1. For some of McAuslan's views on this topic, see *The Plan, The Planners and The Lawyers*, op.cit. and *Planning Law's Contribution to the Problems of an Urban Society*, infra, chapter 8
198. Twining, William: *Legal Education Within East Africa*, East African Law Today, London 1966, British Institute of International and Comparative Law, Commonwealth Law Series, No.5. p.115
199. Ibid, p.176
200. Particularly those who have gone to Africa since independence
201. The professor was supervising teams researching into the history of 'Luo', Bunyoro and Kigezi, Department of History, Makerere University, Kampala
202. See *Problems of Foreign Aid*, op.cit.
203. United Nations Economic Commission for Africa, Workshop on Urbanization in Africa, 1962 and United Nations Economic Commission for Africa, Conference of African Planners, 1967, Addis Ababa
204. *Problems of Foreign Aid*, op.cit. p.237
205. Cliffe, Lionel: *Aid and Voluntary Agencies*, *Problems of Foreign Aid*, op.cit. p.246
206. Epstein, Abrams and Muthiora, ibid
207. Civil Service List, ibid
208. The members of the Missions and Teams invited to prepare plans for the three East African capitals were renowned for their planning experience in their own countries
209. Hagman, Donald, G.,: *The Greater London Development Plan Inquiry, Report*, (Sept. 1971) *Journal of the American Institute of Planners*, Vol. XXXVII, No. 5, p.290
210. Riggs, Fred: *Administration in Developing Countries*, 1964, Boston, Houghton Mifflin
211. Senabulya, J. Development sub-department, Makerere University, 1970, commenting on the American Aid Agreement to build two new residential halls at the University
212. Kamarck, Andrew M.,: *The Economics of African Development*, 1967, New York, Frederick A. Praeger, p.203
213. Op.cit. p.230
214. "Uganda Argus", 7.11.1968
215. "The People", 11.11.1968

216. Gitelson, ibid
217. Gitelson, ibid
218. Introduction to the Report, ibid
219. In Social Implications of Industrialization and Urbanization in Africa, South of the Sahara, a UNESCO publication, 1956, p.124
220. Ibid
221. In accordance with the objectives of the Government's paper, "Work for Progress", Entebbe, Government Printer
222. Ibid
223. The Move to the Left, see the Common Man's Charter, ibid
224. Akena, Adoko : The Uganda Crisis, Kampala, African Publishing House
225. Gitelson, ibid
being
226. Apart from/a public nuisance to Ntinda residents
227. "Uganda Argus", 10.7.1968
228. Ibid
229. In an interview with Neck, P., the then Director of the Management Training Centre, on 3.7.1968
230. Saul, ibid
231. Gott, ibid
232. Loxley, J.,: Financial Planning and Control in Tanzania in "Towards Socialist Planning, op.cit. p.50 also quoted in Gott's article. ibid
233. Rodney, Walter: How Europe Underdeveloped Africa, 1972, Dar es Salaam, Tanzania Publishing House and London, Bogle - L'Ouverture Publications
234. As of 1972
235. See Civil Service List, ibid
236. Gitelson, ibid
237. Gitelson, ibid
238. Ibid
239. See U.N. Housing in Africa, Sept. 1965, Public Sales No. 66 11 K. 4.
240. Goldthorpe, J.E.,: Educated Africans: Some Conceptual and Terminological Problems, Social Change in Modern Society, op.cit. from p.145

- 241. Rodney, Walter, *ibid*
- 242. This was during the transitional period when few Ugandans had been appointed to advisory positions
- 243. Gott, *ibid*
- 244. Clark, Paul, G.,: *Development Planning in East Africa, 1965*, Nairobi, East African Institute of Social Research, East African Publishing House
- 245. See London Government Act, c.33 of 1963
- 246. *Ibid*
- 247. Cited by the Institute of Development Studies, in 246, above
- 248. *Ibid*
- 249. See the Role of Urban and Regional Planning, etc. *op.cit.* p.177
- 250. See Report of Working Group III, p.26
- 251. Mkondya, *ibid*, p.175
- 252. *Infra*
- 253. Walsh, *ibid*, p.65
- 254. U.N. Team Report: The Lagos Metropolitan Authority, 1964, Lagos, Government Printer, as to comments on government reaction see, Walsh, *ibid*.
- 255. Cliffe, Lionel, (ed.): *One Party Democracy, the 1965 Tanzania General Elections*, East African Publishing House
- 256. For each, there is a Public Service Commission, a Teaching Service Commission and a Defence Council respectively
- 257. Aluko, T.M.,: *What Size, What Quality Planning Authorities?* A paper presented at the conference on Education for Environmental Design and Development, Dec. 1967, University of Lagos
- 258. As suggested by the Institute for Development Studies, University of Nairobi, *ibid*
- 259. Davidoff, Paul and Reiner, Thomas, A.,: *A Choice Theory of Planning*, (May, 1962) *Journal of the American Institute of Planners*, *op.cit.*
- 260. Kasfir, *ibid*
- 261. Walsh, *ibid*, p.21
- 262. *Ibid*
- 263. *Infra*

264. McLoughlin, Brian, J.,: Urban and Regional Planning: a Systems Approach, 1972, London, Faber and Faber
265. At. p.305
266. See Muench, ibid. p.288
267. Walsh, ibid
268. Muench, ibid, p.288
269. Nairobi, HRDU, Ibid, Dar es Salaam Economic Research Bureau, ibid Makerere, Institute of Social Research, ibid
270. Hunter, Guy: Education for a Developing Region, 1963, London, Allen and Unwin; Hutton, John: Retrospect and Urban Research Needs, 1970, Kampala, Makerere Institute of Social Research, p.8; Mwingira, A.C.,: Tanzanian Educational Development, The Challenge of Development - African monographs, No.7. Nairobi, East African Publishing House, p.125
271. Ociti, J.P.,: Field work in Urban Areas, (April 1969) East Africa Geographical Review, No. 7. pp 87 - 91
272. Hutton, John, see n.270 above
273. Ibid
274. Onama, Felix - Former Minister of Defence in the Obote Government and Secretary General of U.P.C. in a Debate on The Politicisation of the Civil Service" Makerere University, Kampala, Nov. 1969. Also see Adu, A.L.,: Civil Service in New African States, 1965, New York, Random House
275. "The People", 22.5.70
276. Adu, A.L. ibid, n.274
277. Ibid
278. E.g. Uganda: Standing Orders, 1969, Ministry of Public Service and Cabinet Affairs, Kampala
279. See Public Service Acts - appointment, discipline and dismissal of members of the Public Service Commission
280. See, for example, the circumstances surrounding Semei Nyanzi v Mrs. Karia Acheng, civil rev. no. 75 of 1967, Uganda High Court, discussed in Kanyeihamba, "The Law, the State and the Individual in Uganda", op.cit and the cases cited in n.285, infra
281. Many of the allegations investigated by the Allen Commission had been in existence and well publicised before the military coup in Uganda but the Government of the time had failed to act on them because of this
282. Picho, Ali - Research Officer, President's Office, 1969 - 1970
283. Leys, Colin: Politicians and Policies, op.cit. p.92

284. Leys, *ibid*, n.283 above, p.95
285. But see *R v William Haining* [1970] E.A. 620 and *Asangwile Mwamakula*, *op.cit*, n.281
286. Tribe, *ibid*
287. Uganda Government: Standing Orders (Public Service) 1959, as amended, R.4 - (f)
288. In an interview with former Permanent Secretary to the Public service and Cabinet Affairs
289. Section 8 of the Prevention of Corruption Act, 1971 of Tanzania empowers the President or the Attorney-General to authorise in writing any police officer of or above the rank of Superintendent to require by notice in writing any public officer to give within such time and in such manner as may be specified in the notice a full and true account of all or any class of property he or his agent has in his possession and give an account of how he acquired it. Failure to comply with the notice or knowingly to give a false account of the property is an offence. It is submitted that this kind of law is inadequate for the President or the Attorney-General, as the case may be, may not give the necessary authority. Currently, there is a debate going on in Britain whether there should be a register instituted for members of Parliament and local councillors in which they will be obliged to disclose their various interests. There has been no suggestion that officials of local government who often handle council contracts and deal with planning applications should be covered by the register and yet several of the latter have been among those convicted or accused of corruption in local government. But see Local Government Act, 1972, s.117, as to the disclosure of pecuniary interests by local government officials. Also in England, a local authority is under an obligation to take security in relation to its officials likely to have control of money: Local Government Act 1972, s.114
290. In other words "incompetence" should be included among the "causes" for which one can be removed from office. For instance, see the U.K. Industrial Relations Act of 1971, cap.72, s.24(1) - (6). Under this Act an employer may dismiss an employee for failure to show capability or qualifications for performing work of the kind for which he was hired, and 'capability' is defined in sub-section (7) of the section as meaning "capability assessed by reference to skill, aptitude, health or any other physical or mental quality" and "qualification" means "any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee" holds. But see *Ghai and McAuslan*, *op.cit*. pp.246-50.

CHAPTER SIX

1. Ibid.
2. Op.cit. p.1.
3. Op.cit.
4. P.5.
5. Op.cit. p.7.
6. Supra.
7. Heuston, R.F.V.: Essays in Constitutional Law, 1964, London, Stevens & Sons, p.101.
8. Cmnd. 6153.
9. Cmd. 6378.
10. Minister of Town and Country Planning Act, 1943 and Town and Country Planning (Interim Development) Act, 1943.
11. The Uthwatt Report, Cmd. 6386.
12. Hart, T.: The Comprehensive Development Area: A Study of the Legal and administrative problems of comprehensive land development with special reference to Glasgow, 1968, Occasional paper No.9, University of Glasgow Social and Economic Studies, Oliver and Boyd, pp.9-10.
13. Final Report, p.61.
14. Hart, T., ibid, p.10.
15. Hart, T., ibid.
16. P.2.
17. Popularly known as P.A.G., See McAuslan in "The Plan, The Planners, etc. op.cit. pp.258-259.
18. P.A.G. Report. For a critical appraisal of the Report, see (1966) Journal of Town Planning Institute, 214-215, 257, 405 and (1967) 331; (1968) 203.
19. Telling, A.E., op.cit.
20. Supra.
21. Ssekandi, F. in "Uganda Law Focus", infra.
22. Weigt, Ernst, in (1968) Ostafrikanische Studien, Band 8, Zum 60.
23. Hance, op.cit. Comparative table at pp. 50-53.

24. After the Second World War, successive British Governments came to accept the principle that the territories of East Africa would gradually approach independence with the African interests dominating the political scene.
25. Breese, op.cit.
26. East Africa, its Peoples and Resources, op.cit. pp. 1-59.
27. The others were Ankole, Bunyoro and Toro Kingdoms.
28. Kendall, Henry, ibid, was the first appointee.
29. Kendall, Henry: Town Planning in Uganda, op.cit. p.21.
30. Ibid.
31. Mirams, cited in Kendall, ibid.
32. Simpson Report, Vols. 1 & 2, Entebbe, Government Printer.
33. Ibid.
34. Kendall, ibid. Proceedings of the Town Planning Board, appendix I.
35. Cap. 30.
36. Safier, M. and Langlands, B.W. Ed. 1969, Perspectives on Urban Planning for Uganda, op.cit. p. 133.
37. Safier and Langlands, op.cit, p.33.
38. Supra.
39. For instance, see Thomas and Scott: Uganda, op.cit. p. 35.
40. See the Divisions in the Uganda Agreement, op.cit, p.125.
41. West, H.M.: The Kailo System in Buganda, op.cit. p.125.
42. Kirwan, J.D.: Customary Land Tenure and the Legal System in Buganda, A Digest of African Local Administration, 1948, Col. Office, London; Wallis Report: Inquiry into African Local Government of Uganda, 1953, Entebbe, Government Printer.
43. Art. 9 of the Uganda Agreement, and the Uganda Police Ordinance, 1908.
44. Uganda Government Statistics, 1954, Entebbe, Government Printer, and West, ibid, pp. 114-117.
45. Southall and Gutkind, ibid, pp.31-50 and 113-135.
46. The Uganda Relationships Commission Report, 1961, Entebbe, Government Printer, pp. 81-83, West, ibid, p.135.
47. Proceedings of the Legislative Council, 4.12.1945.

48. Burke, F.P.: Local Government and Politics in Uganda, 1964, Syracuse University Press.
49. Liversage, V.: Land Tenure in the Colonies, 1946, Cambridge University Press, p. 337 and chapter XII.
50. Ingram, K.: The Making of Modern Uganda, 1959, East African Institute of Social Research, East African Studies, No.12, p.84.
51. Ghai & McAuslan, op.cit., p.81.
52. Op.cit.
53. Ibid.
54. Furedi, F.: The Development of Kikuyu Political Organizations, 1970, M.A. Thesis, SOAS, London University.
55. Ibid.
56. Quoted in the Nairobi Master Plan Text of 1948, op.cit.
57. Odhiambo, Atieno, ibid, p.27.
58. Brummage, infra.
59. Nairobi Master Plan, ibid.
60. Ibid.
61. Furedi, F.: The African Crowd in Nairobi, op.cit. p.3.
62. Odhiambo, Atieno, ibid.
63. See Rosberg and Nottingham: The Myth of Mau Mau, 1967, New York, Praeger; Mboya, T.: The Kenya Question: An African Answer, 1956, London, Fabian Colonial Bureau.
64. Nazrui, Ali, M.: Independent East Africa, 1968, Nairobi, Zamani, A Survey of East African History, East African Publishing House, p.361.
65. East Africa, Its Peoples and Resources, op.cit, Maps.
66. Thus, the name 'Tanzania' is used with reference to the post-union period.
67. See Kieran, J.A., in East Africa, Its Peoples and Resources, op.cit. p.21.
68. Casum, W.T.: Architectural Notes on Dar es Salaam, The Dar es Salaam Townsman, Dar es Salaam, City Council, Dar es Salaam.
69. Hamersley, A.: Agriculture and Land Tenure in Kenya, East Africa, etc. op.cit. p. 189.
70. The Canadian Planning Mission, Dar es Salaam Master Plan, op.cit.

71. John: Housing and Urban Land Distribution in Tanzania, a seminar paper, .21.3.1973, Economic Research Bureau, University of Dar es Salaam.
72. Leaning, John, *ibid.*
73. See case studies at the end of Leaning's paper, *ibid.*
74. The Central African Council: Report on African Housing, Feb. 1949, Standing Committee on African Housing to the Central African Council (The Council consisted of the Governors of the three territories).
75. Reply to the Commission's Report, 1956, Cmd. 9809.
76. Mitchell, Sir Philip: at a meeting of the Colonial Affairs Study Group of the Empire Parliamentary Association held at Westminster Hall 25.7.1947 and reported in "Current Affairs in East Africa," p.14.
77. East African Economic Review, Jan. 1956, Postscript on the Royal Commission Report.
78. Tanganyika, 1961, Uganda, 1962, Kenya, 1963; see Independence Orders - in Council for each territory.
79. *Op.cit*, p.275.
80. Ominde, S.H.: The City of Nairobi, Population Changes and Pattern, 1971, Journal of East African Research and Development, Vol.1, No.1, p.77.
81. See Aluko, T.M.: What Size, What Quality - Planning Authorities? A paper presented at the Conference on "Education on Environmental Design and Development, Dec. 1967, University of Lagos.
82. Odhiambo, *ibid.*
83. Odhiambo, *ibid.*
84. See O'Brien, Justin: Brown Britons, August 1972, London, A Runnymede Trust Publication from p.9.
85. See The Civil Service Lists of each Territory as of 1971. Ministry of Public Service. The lists include departments, names and qualifications. It is possible from the latter to discover what experience a particular officer has had before appointment to the department.
86. *Supra.*
87. Kenya 'Daily Nation' 7.10.1972 and East African 'Standard' 8.12.1970. Since the military coup in Uganda, sheep and chickens have been found kept in 2nd and third floors of residential buildings in Kampala.
88. Weigt, Ernst, *ibid.*

89. There is a Hilton Hotel in Nairobi, Hotel Africa in Dar es Salaam and International Hotel in Kampala of the same qualities and catering for the same groups of people.
90. Phelps, Michael: Protection of Industry in Kenya, Developmental Trends in Kenya, op.cit. p.274.
91. In an interview with the Manager of the International Hotel, May 1971, Kampala.
92. African Governments seem anxious to host international conferences perhaps to show that they are stable and developing as well as to attract tourists. In Uganda the Nile Hotel and the International Conference Hall were built for the sole purpose of accommodating the delegates to the O.A.U. Meeting scheduled for 1971. Dr. Obote was overthrown before the meeting could take place. The first conference to be held there was of religious leaders in Uganda sponsored by the military government.
93. U.N. Teams, Professor Buchanan of the U.K. and the Canadian Planning Team, respectively.
94. ECA Conference of African Planners, 2nd sess. Addis Ababa, U.N. papers E/CN/14/CAA2/Inf/22, original in English, p.13.
95. Supra.
96. Ministry of Economic Planning and Development, Conf/files, The Government of Uganda, Entebbe.
97. Ibid.
98. Odongo, J.: Regional and Rural Planning - Practice and Possibilities in Uganda in the Role of Urban and Regional Planning, etc. op.cit. p.41.
99. Ibid.
100. First, there was an attempt to assassinate the President, then the officers concerned accompanied him to the Commonwealth Prime Ministers' Conference in Singapore and while there the military coup d'etat took place on 25.1.1971.
101. Ddamba, K.: Development Policies and Planning Experience in Uganda, The Role of Urban and Regional Planning, etc. op.cit. 173.
102. Quotation marks supplied.
103. Ddamba, ibid, from p.179.
104. Quoted in the Dar es Salaam Master Plan, op.cit, by the Canadian Planning Team.
105. Helleiner, G.K.: Socialism and Economic Development in Tanzania, Jan. 1972, Journal of Development Studies, Vol.8, No.2.

106. Helleiner, *ibid.*
107. Odhiambo, *ibid.*
108. Ominde, *ibid.*
109. The Republic of Kenya, Sessional Paper No. 10, *op.cit.*
110. *Ibid.*
111. See 1966 - June 1972 - Selected Development Studies Writings, Institute of Development Studies, Annual Report, University of Sussex.
112. Hogsbro, S.: Urban Development Policies and Planning Experience - Kenya, in *The Role of Urban and Regional Planning, etc. op.cit.* p.187.
113. Ligale, A., *ibid.*, p.57-58.
114. Hogsboro, *ibid.*
115. See Proposal of the City Council to the International Legal Centre of 23.2.1970, C7/TP/315.
116. *Ibid.*
117. *Ibid.*
118. In Breese, *op.cit.* pp.366-373.
119. *Ibid.*, p.332.
120. Muthiora, *ibid.*, p.333.
121. This phenomenon characterised the Development of the Kivulu estate near Makerere University where thousands of squatters were evicted from the area, and blocks of flats constructed to house a few hundreds. At the time of writing many of the flats were still unoccupied. The average rent for these flats is about 100 shillings a month whereas the average rent paid for the houses demolished was about 50 shillings a month.
122. Compare the opinions of the City Engineer of Kampala with those of Furedi, *ibid.*
123. *Supra.*
124. See those proposed by Bloomberg and Abrams, *infra.*
125. *Infra* (see Rates and Rents).
126. Houlberg, N.O., Jorgensen and Steele, R.: Site and Service Scheme; Analysis and Report, ERDU, 1971.
127. The author visited Sweden and Denmark in 1970 and Canada (Nova Scotia) in 1974.

128. Nyerere, J.K.: What of External Aid? in Ujamaa: Essays on Socialism, 1968, Dar es Salaam, Oxford University Press, pp.21-29, and in Uhuru na Umoja, op.cit. p.314.
129. Tanzania Government: The Economic Survey and Annual Plan, 1970/71, Dar es Salaam, Government Printer, pp.73-124. Also Cf. Mkama, ibid, p.196, and Loxley, J.: Financial Planning and Control in Tanzania, Towards Socialist Planning, op.cit. p.62.
130. In Urbanization in Newly Developing Countries, op.cit. p.128.
131. U.N. World Social Situation, 1957, p.124.
132. Abernathy, B.D.: Political and Administrative Factors Affecting Economic Development Strategies in Independent African States, Political Science Papers, Social Sciences Council Conference, University of East Africa, p.10.
133. Saul, ibid, p.6.
134. Uganda Government: Third Five Year Development Plan, op.cit, p.359, para. 19.13.
135. Chapter One.
136. See The Role of Urban and Regional Planning, etc. op.cit. pp.182-183.
137. See Menezes, J.R.: Land Planning Legislation in Kenya, (1968) E.A.L.J. Vol.4, p.221.
138. The Land Planning Act, 1968 and The Land Control Act, 1967.
139. Rule 5 of the Land Planning Act, 1968.
140. 1st schedule to the 1968 Act.
141. Ibid.
142. S. 3(2) of the Ordinance, Cf: S.4(1) of the 1968 Act.
143. Infra. This case is fully discussed in (March 1972) E.A.L.J. Vol. III, No. 1, pp.65-67.
144. Ibid.
145. R. 7(2).
146. See Mkama, ibid, p.201.
147. Mkama, ibid, p.201.
148. Mkama, ibid, p.201.
149. Cf: Kenya's Rent Restriction (Amendment) Act, 1971, which allows landlords to charge an annual rent equal to 16% of the capital costs of the buildings and costs. (This note is extracted from McCauslan's "Aspects of Urban Land Law with Special Reference to East Africa," op.cit., p.3.

150. In Land Law Reform in East Africa, op.cit. from p.265.
151. Cap. 30.
152. See Langlands in "Perspectives on Urban Planning for Uganda," op.cit. p.133.
153. Uganda Government: Uganda Report, 1962-1963, Entebbe, Government Printer, p.138.
154. Uganda Report, 1962-1963, see no.153 above, p.138.
155. Kampala Development Plan, 1972, Structure Report, April 1972, Department of Town and Regional Planning, Kampala, p.11.
156. Kampala Development Plan, ibid, p.8.
157. The current plan proposals in the National Development Plan of each territory suggest representation, consultation and participation, ibid.
158. E.g. Saul, ibid, p. 6-8, Hanson, A.H.: Planning and the Politicians (and other essays), 1964, London, Routledge & Keegan Paul, from p.192 and Harbeson, John, W.: Nation-Building in Kenya: The Role of Land Reform, 1973, Evanston, North Western University Press.
159. Kendall, H.: Town Planning in Uganda, 1955, op.cit. Appendix I.
160. Langlands, ibid, p.152.
161. Ibid.
162. See 'Introduction' to the Report and appendix thereof.
163. Report on the Proposed Hospital Centre and Medical School at Kampala, June 1946, Entebbe, Government Printer, p.1.
164. See 'Acknowledgements' in their respective Reports, ibid.
165. Infra.
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167. See "Times" 30.4.73 "Letters to the Editor", "Guardian" 9.5.73 "editorial" and of 15.6.1973, an article by McKie, David.
168. See "Daily Telegraph", 12.2.1973, "Coventry Evening Telegraph", 15.3.1973, and of 2.5.1973, and "Guardian" 30.4.73.
169. Foulkes, David: Introduction to Administrative Law, 1972, London, Butterworths, p.99.

170. Hagman's Report, *ibid.*
171. Hagman, *ibid.*
172. In an interview with the Market Master, Wandegaya, for the "Legislative Process" exercise at Faculty of Law, Makerere University, Nov. 1970, Kampala.
173. The Skeffington Committee on Planning and Participation. For some of the reaction to the Committee's Report, see "The Times", 2.6.1970.
174. Hagman Report on the Greater London Development Plan, *ibid.*
175. The flag of the Democratic Party.
176. See Transcript of the Proceedings of the structure Plan Inquiry, 1974, Department of the City Engineer and Planning Officer, Coventry, West Midlands.
177. Cullingworth, J.B.: Town and Country Planning in Britain, *op.cit.* pp. 99-100.
178. Town and Country Planning (Development Plans) Regulations 1965 (S.I. 1965 No. 1453) Sch. 5 para. 2.
179. Standing Committee G. Hansard, 20.2.1968, col. 86.
180. Heap, Desmond: The New Town Planning Procedures, 1963, London, Sweet and Maxwell, p.27 para. 3-01.
181. Town and Country Planning Act 1971, S. 12(1).
182. Self, P.: Opinion: A Planning Charade (Sept. 1970) 38 Town and Country Planning, pp. 366-9; and generally Cullingworth, *ibid.*, chapter XIII.
183. Hart, T.: The Comprehensive Development Area, *op.cit.* p.51.
184. Hart, *ibid.*, p.54.
185. Hart, *ibid.*, p.54.
186. Self, P., *ibid.*, see n.182 above.
187. In the Journal of the American Institute of Planners, *op.cit.*, p.294.
188. Hart, *ibid.*, p.52.
189. *Supra.*
190. Hart, *ibid.*, from p.50.
191. U.N. Team, Project Report, City of Kampala Council, Kampala.
192. Republic of Kenya: Development Plan, 1970-1974, Nairobi, Government Printer, para. 3.18 under heading "People's Participation". (*emphasis added*)
193. See "The Role of Urban and Regional Planning etc." *op.cit.* at pp.49 and 77.

194. Ouma Oyugi, W.: Participation in Development Planning at the Local Level, Discussion Paper No.103, Feb. 1973, Institute for Development Studies, University of Nairobi.
195. See Kaplan, Advocacy and the Urban Poor in (March 1969) Journal of the American Institute of Planners, Vol.35, No.2.
196. Ibid, TS3, pp.44-47.
197. "Dukas" are small shops.
198. Ibid.
199. The preparation of the Dar es Salaam Master Plan was made possible by a Canadian Government loan of about 2 million shillings, see Mkama, ibid, p.203.
200. Ibid, para. 1.5.
201. Cohen, Stephen, S.: Modern Capitalist Planning: The French Experience, Harvard University Press quoted by Wildavsky, Aaron in "Does Planning Work? Review Essay in the Public Interest No.24 (Summer 1971) p.95.
202. Crooks, R.J.: Planning for Development Countries, (April 1971) British Town Planning Institute, ibid.
203. Ibid.
204. Crooks, ibid.
205. Heap: The New Town Planning Procedures, op.cit. p.29; Eansard, 29.2.1968, col. 126, et seq.
206. Rule 3 under the Act.
207. See Fear: An Outline of Planning Law, op.cit. p.69.
208. (1962) 1 ALL.L.R. 517.
209. (1952) 1 ALL.L.R. 1166.
210. (1963) 15 P & C.R. 20.
211. (1968) 1 W.R. 600.
212. (1964) 1 Q.B. 178.
213. (1967) 111 S.J. 559, 65 L.G.R. 495, 18 P. & C.R. 514.
214. (1962) E.A. 738.
215. (1957) E.A. 104. The lease required the appellant to erect "a building of approved design". He submitted the design for approval out of time and on*
216. (1963) E.A. 478.
217. (March 1972) E.A.L.J. Vol.VIII, No.1, pp.68-69. This point is further discussed in the "objectives of planning", ibid.

*the same day as respondents served notice for breach of covenant upon him. Respondents replied that in view of the notice and their intention to proceed for forfeiture of the lease they would not consider his designs. The court held that respondents' stand was erroneous.

218. Ibid.
219. Stewart, J.D. and Eddison, Tony in (1972) Journal of the Town Planning Institute, p. 367 included in McAuslan & Roberts, op.cit. p.84.
220. The Plan obtainable from Entebbe, Government Printer.
221. The Plan is in 8 volumes entitled: National Capital Master Plan (General) Planning Studies, Physiology and Natural Resources, Transportation Studies, Public Services and Utilities, Economic Evaluation, City Form and Environment and Recommended Works Programme. And apart from the diagrams in each volume, the Plan is accompanied by six separate maps.
222. T.S.3, p.25.
223. Hogsbro, ibid, p. 191.
224. Infra.
225. The application to advertise must be submitted to the Planning Committee within a specified period and must give details of the type of advertisement and declare the name of the premises and the proprietors thereof.
226. Stewart and Eddison, ibid.
227. Generally, see Heap: An Outline of Planning Law, op.cit., from p.241.
228. 87 N.J. Super. 526, 210 A. 2d. 99 (1965).
229. Ibid, at p.77.
230. Ibid.
231. E.g. under Part III, cap. 30, Uganda Laws, 1964.
232. Ibid, Also see Province of Bombay v. Municipal Corporation of Bombay (1947) A.C.58; Director of Lands and Mines v. Sohan Singh, I.T.L.R.(E) 631. Bashir v. The Commissioner of Lands (1960) A.C.44 (1960) 1 ALL.E.R. 117.
233. Ibid.
234. (1957) E.A.123. The court referred to the following Indian cases, Birabe Narayan v. Collector, 39 I.C. 14 and Frenchman v. Collector 24 Bom.L.R.782.
235. (1957) E.A. 523.
236. (1958) E.A. 794.
237. Act 14 of 1969.
238. See Kanyeihamba, G.W.: The Legal Implications of the Trade (Licensing) Act, 1969 in "Uganda Directory of Trades and Commerce", 1969, Consolidated Printers, Kampala.

239. Lubar, Charles, G.: Government Protection of Foreign Investments in East Africa, (June 1971) E.A.L.J., Vol. VII, No.2, p. 108.
240. Gitelson, *ibid.*
241. *Ibid.*
242. Among the few may be mentioned the following: Collector v. Kassam Shivji Bhamji and Others (1959) E.A.C.A. 1063 and Manyara Estates Ltd. v. National Development Credit Agency (1970) E.A. 177.
243. See cases discussed under "compensation" in the following works, Heap, Telling, Charlesworth, Hagman and Encyclopedia of Planning, all of which have been referred to in this study.
244. Examined under local government and administrations in the previous chapter.
245. E.g. Uganda Local Administrations Act, 1969, *ibid.*
246. "The People", 8.6.1969.
247. E.g. Cap. 27 of Uganda as amended by the Urban Authorities (Amendment) Act. 1969, S.63.
248. *Ibid.*
249. For a general discussion see "Financing Urban Development" in the next chapter and also the examination of private and public ownership of land in the fourth chapter.
250. Report of Working Group V in the "Role of Urban and Regional Planning in National Development of East Africa, *op.cit.* pp.29-34.

CHAPTER SEVEN

1. Ibid.
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3. Ibid.
4. Cited in Southall, A.W. Ed.: Introductory Summary in Social Change in Modern Africa, 1961, London, Oxford University Press, pp.25-30.
5. Southall A.W. & Gutkind P.C.W.: Townsmen in the Making, 1956, Kampala, East African Institute of Social Research, East African Studies No.9, Makerere University.
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17. Vengroff, Richard: Urban Government and Nation Building, *ibid*, p.588.
18. Cmd. 9809, from.p.103.
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20. Howe, C.W.: An Analysis of African Household Consumption and Financial Behaviour in Kenya and Uganda, 1968, East African Economic Review, Vol. 4, No.1, pp.56-62.
21. *Ibid*.
22. Perkin, D.J.: Some Aspects of Status and Role on a Kampala Housing Estate, Jan. 1963, East African Institute of Social Research, Kampala, University of East Africa; Oram, *ibid*, p.8.
23. Dennis, Norman in 'Planning Outlook', Spring 1969, Vol.6.
24. Cap. 83.
25. Labour Annual Reports, Entebbe, Government Printer.
26. Allen, C.H.: African Trade Unionism in Microcosm, 1970, 'African Perspectives', pp.393-426; Amsden, A.H.: International Firms and Labour in Kenya, 1945-1970, 1971, London; Ghai, D.P.: Employment Performance; Prospects and Policies in Kenya, Paper delivered at the Cambridge University Overseas Studies Committee Conference, 1970, on "Prospects for Employment Opportunities in the Nineteen Seventies"; Nicol, B.N.: Industrial Arbitration in Uganda before the 1964 Trade Disputes (Arbitration and Settlement) Act, 1969, Kampala, Social Sciences Council Conference, Sociology Papers, University of East Africa, Vol.II, p.391.
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39. Ibid.
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41. Each of the East African territories has such a corporation.
42. For instance, Universities under Education, hospitals under Health and 'Commodity' Corporations under Agriculture.
43. See Review of current situation in Third Five Year Development Plan, Uganda, *op.cit.*
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46. E.g. cap. 321 of Uganda Laws, 1964, Part I.
47. Cap.269 - statutory instrument 269-13.
48. The Local Government Regulations 1963, L.N. 256 of 1963.
49. Ibid.
50. Ibid.
51. Ibid.

52. See Ouma, J.P.B.M.: The Supply of Building Materials to Kampala, Social Sciences Council Conference, 1969, Kampala, University of East Africa, Geography Papers, op.cit. Mimeo; U.N. Mission to Kenya on Housing, op.cit. pp.63-67; Alcock, A.E.S.: Changes in the use of Building Materials and Products for Low Cost Housing in the Tropics, in Planning Outlook, The Journal of the Department of Town and Country Planning in the University of Newcastle, Oriel Press, Ltd., op.cit.
53. Infra.
54. Report of the Government's Housing Policy Committee, Uganda, 1962, Entebbe, Government Printer; Report of the Working Party on Building Standards (Kenya), 1961. Nairobi, Government Printer, infra.
55. East Africa Royal Commission 1953-1955, Report, op.cit. pp.200-250.
56. Ibid.
57. It is suggested that a scientific investigation team might determine the durability of the materials to be used and the 'permanency' of the structures to be constructed before the periods are prescribed.
58. See Novack, David E. and Lekachman, Robert, eds.: Development and Society: The Dynamics of Economic Change, 1969, New York, St. Marten's Press, from p.309.
59. Crooks, R.J.: Planning for Developing Countries, British Planner and Planning Institute, ibid, U.N. Statistical Yearbook, 1968, New York.
60. Ibid.
62. See the Current Development Plans of the respective countries, op.cit.
63. Ibid.
64. Ibid.
65. Art. 9 of the Constitution of the U.S.S.R. Dec. 5, 1936; Art. 9 of the Land Code, R.S.F.R.S. 1922; Cf. Factory v. Kniazeva, Sotsialisticheskaya Zakonnost, 1958, No.1, p.89.
66. Tribe, ibid.
67. The few who acquire houses, do so for commercial purposes.
68. Third Five Year Development Plan, 1971/2 - 1975/6, Entebbe, Government Printer, p. 357.
69. The Uganda Budget, 1971/2, Entebbe, Government Printer.
70. Ibid.
71. Mortgage Finance Limited. The Corporation's board is also the board for the subsidiary.

72. In an interview with the Chairman of the Corporation, May 1972, London.
73. Annual Report contained in memo. 15.5.71 to the Directors of the Corporation.
74. The Economic Survey and Annual Plan, 1970-71, Dar es Salaam, Government Printer.
75. Republic of Kenya, Development Plan, 1970-74, Nairobi, Government Printer, para. 11.4.
76. See n.75, supra, para. 19.5.
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78. Republic of Kenya, etc. n.75, supra, para. 19.18, Uganda's Third Five Year Development Plan, p.253; and Generally, Gervers, J.H.: Preliminary Results of A Survey on the Financing of large-scale enterprise in Uganda, 1967, Makerere Institute of Social Research, Kampala; Tribe, M.A.: The Finance of Housing in the Public and Private Sectors, 1968, Addis Ababa, E/CN/14/HOU/31, mimeo.
79. Uganda, The Birth of the Second Republic, 1971, Entebbe, Government Printer, p.24.
80. Rothchild, Donald, Ed.: Politics of Integration; An East African Documentary, 1968, Nairobi, East African Publishing House, pp.284-302.
81. Economic Survey of Kenya, 1971, Nairobi, Government Printer; Dependency in Kenya, Developmental Trends in Kenya, op.cit. p.325.
82. Obstacles and Incentives to Private Foreign Investment (NICB) 1967-1968, New York, Vol.1, p.85.
83. Quoted in Marris Peter: Lending Money: Discussion Paper No.37, Dec. 1966, Nairobi, Institute for Development Studies, p.16.
84. Ibid.
85. For ownership, savings and financing of companies, see Snowden, P.N.: Company Finance in Kenya's Manufacturing Sector, Developmental Trends in Kenya, op.cit., p.295, esp. Table 1, 2 and schedules A, B, C, D, pp. 317-322.
86. Cited in Mawazo, Dec. 1967, a Makerere University publication, Vol.1, No.2, p.29.
87. Mohiddin, Ahmed: Mawazo, op.cit. Dec. 1967, p.29.
88. Ibid.
89. 18 business firms were interviewed for this particular survey.
90. Ibid. Table 12.

91. See Treasurer's Report, National Insurance Corporation, August, 1971, Kampala.
92. Gervers, *ibid.*
93. Third Five Year Development Plan, *op.cit*, pp.250-256.
94. Tribe, *ibid.*
95. *Ibid.*
96. Tribe gives a table showing the extent of the Corporation's development interests in Kenya, *ibid.*
97. Loxley, J.: Building Society Instability in Kenya, 1965, Centre for Economic Research, University of Nairobi, mimeo.
98. Leaning, *ibid.*
99. Squatters usually use abandoned cardboards, boxes, corrugated iron sheets and wood for the purposes of building themselves shelters in shanty towns.
100. *Ibid*, p.248.
101. Bloomberg and Abrams, *ibid*, from p.3.
102. *Ibid.*
103. Each of these organs control one or more aspects of the housing industry such as finance, policy, labour, personnel and "standards".
104. It is also suggested that they should be made available for renting by the general public.
105. *Infra.*
106. *Ibid.*
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108. *Ibid.*
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110. Leys Colin: Politicians and Policies, 1967, Nairobi, East African Publishing House, p.78; Steele, David: Hindrances to the Programme to Encourage the Rise of African Entrepreneurship in Kenya Resulting

from the Theory of the Dual Economy, Developmental Trends in Kenya, from p.205.

111. Leaning, *ibid*; Awori Thelma: Housing and Social Needs, Housing Problems in Uganda, *op.cit.*, p.51.
112. Leaning, *ibid*.
113. Scattered all over East Africa and within close proximity of urban centres are to be found lodges and huts which were available for the use of colonial administrators going on "safaris". Some of the more recent structures were called 'uniports'.
114. House tax payable irrespective of whether or not these services exist.
115. *Ibid*.
116. *Ibid*.
117. The conditions of winter in Canada may necessitate the construction of thick walls and the provision for fire places. An East African is not bothered by such climatic conditions.
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119. Charged on land and property owners, *ibid*.
120. Cap. 27.
121. Due, John, F.: Taxation and Economic Development in Tropical Africa, 1963, Massachusetts Institute of Technology, M.I.T. Press.
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123. S.6.
124. S.6.
125. Sch. 2 to Act 7 of 1969.
126. Diejomaoh, *ibid*.
127. Due, *ibid*.
128. This was a flat rate imposed according to the type of housing, i.e. whether standard, sub-standard or swahili.
129. Cap. 317, see Kanywanyi, *ibid*, p.274.

130. Dar es Salaam Master Plan, *ibid.* Planning Studies, TS2, p.128.
131. *Op.cit*, n.130, p.129.
132. *Due, ibid.*
133. Allen Report, *op.cit*; Hannigan, St. J.A.: In "East African Law Today," *op.cit*, pp.96-100.
134. E.g. Cap.65, Laws of Uganda 1964, SS. 23-36.
135. (1957) E.A. 272.
136. Diejomaoh, *ibid.* Also see, current Rateable Values of property in Kampala, Nairobi and Dar es Salaam. Town Clerk's Department, respectively, 1970-73.
137. (1920-29) Uganda Law Reports, Vol.3, pp.75-77.
138. (1969) E.A. 548.
139. (1963) E.A. 330.
140. (1963) E.A. 20.
141. (1964) E.A. 582.
142. (1968) E.A. 517.
143. (1966) E.A. 365.
144. Cf. Dar es Salaam Municipal Council v. Transport Commissioner (1960) E.A. 478.
145. (1959) E.A. 422.
146. (1959) E.A. 76.
147. E.g. as when amenities deteriorate since last valuation or there are work operations close to the property concerned.
148. *Ibid.*
149. Controlled purely by the conditions of demand and supply.
150. *Ibid.*
151. *Ibid.*
152. *Ibid.*
153. The Acquisition of Buildings Act, 1971.
154. *Infra.*
155. *Ibid.*

156. This particular Party was concerned with business premises. For residential Rent Committees, see Kenya Gazette Notices 3288/1957 and 5837/1962.
157. For instance, see Hawkins, A.J.: Law Relating to Owners and Occupiers of Land, 1971, London, Butterworths, from p.136 and 153.
158. The members were Waruhiu, S.N. Esq., (chairman); Omolo, I.; Sondhi, K.K. Miss; Abwao, J.P.W.: Alderman Kasyoka, J.M., Rees, J.R.T.; Flatt, P.N., Esq. Muhanji, S. Esq. (co-opted member) and, Kanyua, F. Esq. (secretary).
159. For a comprehensive study of Leases and licences, see James, R.W. in (Sept. 1967) E.A.L.J. Vol.3, No.3, p.218.
160. High Court of Uganda.
161. Misc. App. No.3 of 1948, Uganda High Court.
162. Misc. App. No.1 of 1947, Uganda High Court.
163. (1968) E.A. 497.
164. (1968) E.A. 166.
165. Interview held with 15 tenants in Kampala, 1971.
166. (1959) E.A. 282.
167. Ibid.
168. (1968) E.A. 218.
169. (1968) E.A. 318.
170. (1971) E.A. 156.
171. (1972) (Part I) E.A.C.A. 6.
172. Regulation 28 of Landlord and Tenant (Shops and Hotels) (Tribunal) (Forms and Procedure; also, see R.V. Kesteven Justices (1844) 3 Q.B. 810 and Ladd v. Marshall (1954) 3 ALL.E.R. 715.
173. (1965) E.A. 671.
174. Cf: Kulubya v. Singh (1963) 3 ALL.E.R. 499, ibid.
175. (1950) 24 K.L.R. 32.
176. (1949) 16 E.A.C.A. 15.
177. (1957) E.A. 486.
178. (1950) 17 E.A.C.A. 37.
179. (1972) E.A. 227.

180. (1946) E.A. 65.
181. (1959) E.A. 665.
182. (1968) E.A. 497.
183. (1963) E.A. 4.
184. (1957) E.A. 729.
185. Cap. 283.
186. (1965) E.A. 370.
187. (1946) 22 (1) K.L.R. 8.
188. See Patel v. Plateau Licensing Court (1954) 27 K.L.R. 147; Ndegwa v. President and Members of the Nairobi Liquor Licensing Court (1957) E.A. 709; Desai v. Ali (1952) 20 E.A.C.A.1; Cf: R.V. Emau (1945) 21(1) K.L.R. 47; R.v. Kabuga (1906) 2 E.A.L.R. 61 and Rehman v. Gudka (1957) E.A. 4.

For the attitude of the Court of Appeal for East Africa towards personal Liberty and property rights, see Kanyeihamba, G.W. and Katende, J.W. in (Summer, 1972) Public Law, London, Stevens from p.107.
189. Hawkins, *ibid*, p.153.
190. Between 1957 and 1969 the East African Law Reports contain 105 cases on Rent Restriction Legislation. For a detailed study of an urban area, see Patel, L.R.: A Case Study of Housing and Rents in Mombasa, Mineo, Social Sciences Council Conference, 1969, Kampala, University of East Africa.

CHAPTER 8

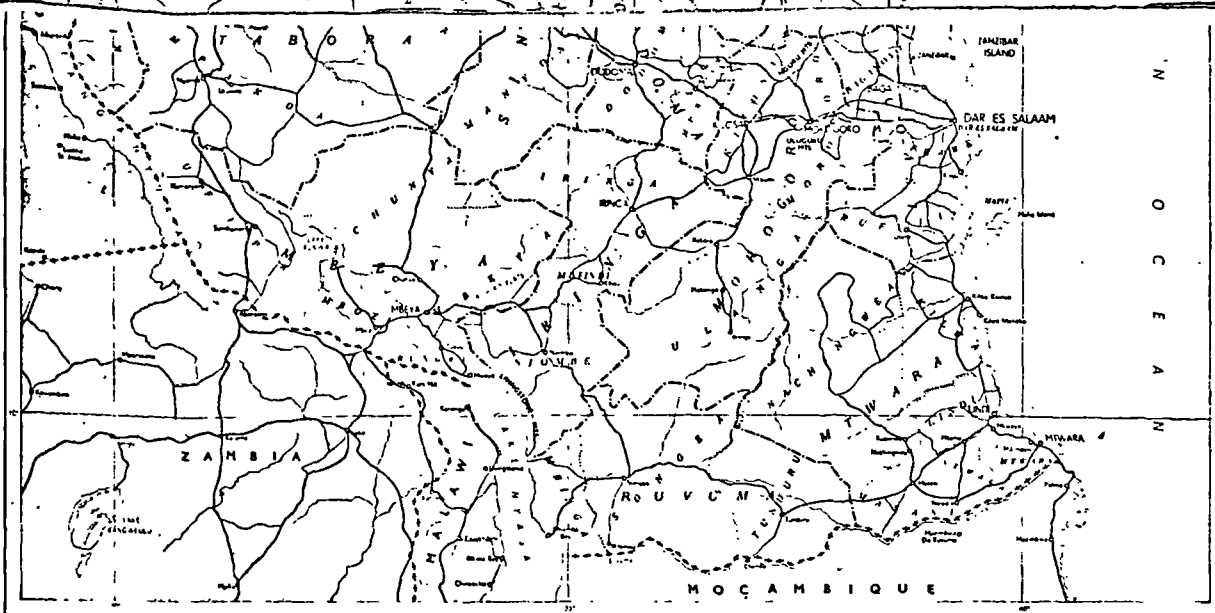
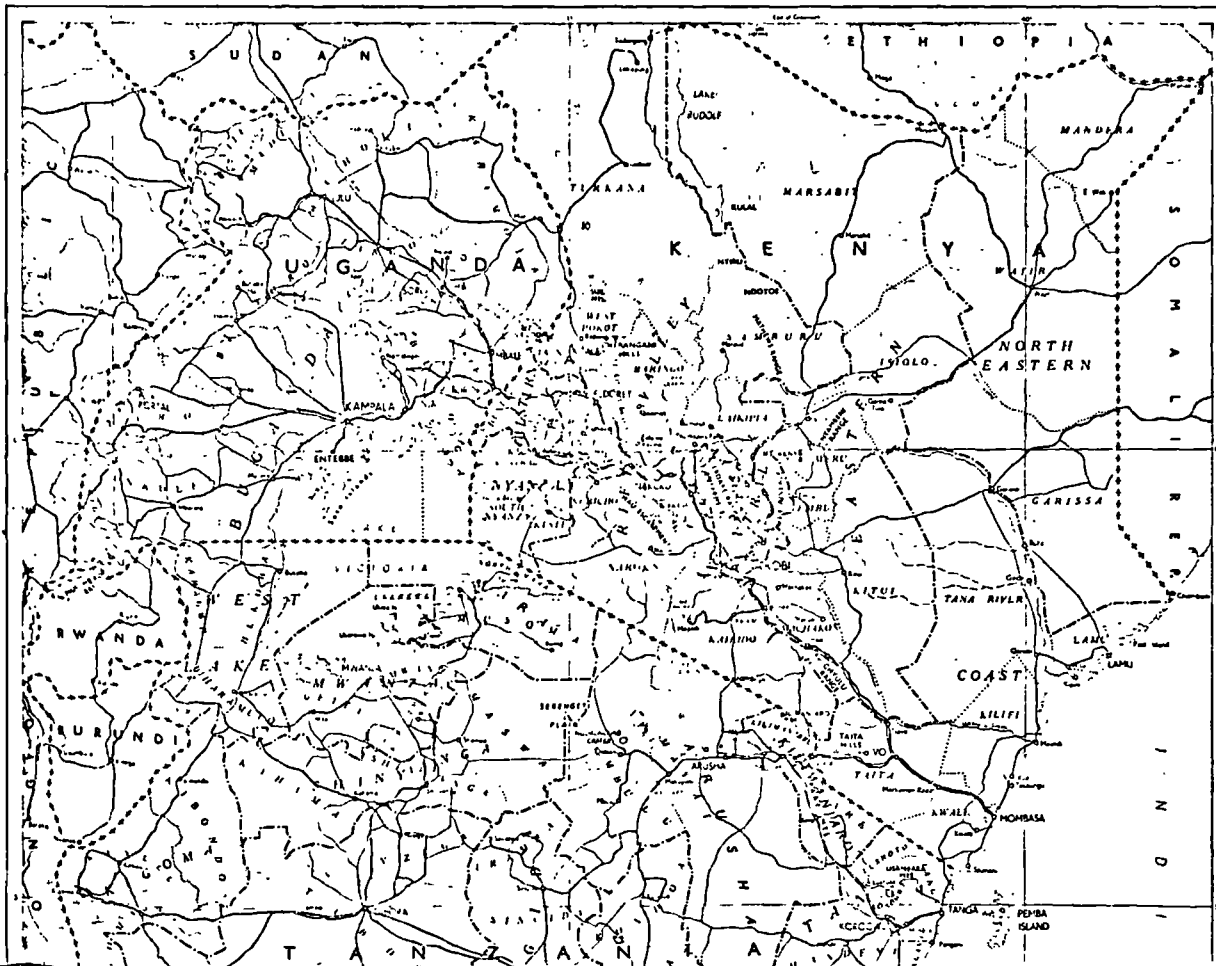
FOOTNOTES

1. Ibid.
2. March (1974) M.L.R., Vol. 37, No.2 from p. 134.
3. At p. 135; Also see Dicey, : The Paradox of The Land Law (1905) 21 L.Q.R. 221 cited in McAuslan's article, n.5.
4. In an interview with author, April 1974.
5. (1932) A.C. 562.
6. Millar, Cockburn, E.,: Some Memories of Lord Atkin, (1957) 23 Glim 13, at p. 15.
7. Castle, Barbara: 'Sunday Times', 10.6.1973, p. 17. At the time she was writing as an ex-Cabinet Minister. She returned to the Cabinet in March 1974 with the return to power of the Labour Party.
8. The latter remain politically answerable for the actions of the former.
9. Ibid, chap. 2.
10. James, R.W., ibid.
11. Ibid.
12. For a general survey of 'African Socialism', see Friedland, William H. and Rosberg, Carl, G., Jr.,: Eds.,: African Socialism, 1964, Stanford University Press.
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14. Ibid.
15. See Recommendations in Land Law Reform in East Africa, op.cit. p. 320.
16. Ibid.
17. U.N. Papers, E/CN/14/cap.2/INF/22, original in English, p. 13.
18. Franck, n. 77, infra; Abrams, Charles: Housing in The Modern World, 1964, Massachusetts Institute of Technology, from p. 114.
19. Cap. 309, s. 23.
20. Chiefs are recognised as the communicators of policy and decisions.

21. Crim. Sess. no. 47, (1969) E.A.C.A.
22. Ibid, n. 21.
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34. January (1973), Uganda Law Focus, Vol. 1, no. 2, p. 65.
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37. See Neighbourhood Law Centre at Law School, University of Warwick.
38. This responsibility is undertaken by the Department of the Solicitor-General.
39. In an interview with a former legal officer of the City of Kampala, January, 1973.
40. Ibid.

41. Newly qualified lawyers join the Attorney-General's chambers or private firms for pupillage.
42. *Infra.*
43. See the comparable costs for these houses in the previous chapter, *ibid.*
44. Savereid, *ibid.*, from p. 35.
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46. For a study of specific tribunals in East Africa, see McAuslan in *East African Law Today*, *op.cit.*, p. 47.
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48. Cap 56, s. 1.
49. *Ibid.*
50. *Ibid.*
51. Uganda, cap. 56; Kenya, cap. 102; Tanzania, cap. 32.
52. E.g. Report of the Agricultural Education Commission, 1967, Nairobi, Government Printer; The Allen Commission Report, *ibid.*; and Report of the East Africa Commission, Cmd. 2387.
53. Cited in Kiapi, n. 47, *ibid.*
54. Uganda Explosive Act, cap. 309, ss. 4-25.
55. Authorised under the Act establishing the particular department or institution.
56. Cmd. 218.
57. One of their strong recommendations was contained in para. 278 and related to compensation of land procedures and this was incorporated in the Town and Country Planning Act of 1959.
58. Tribunals and Inquiries Act, 1958; Also see, Garner: *The Council on Tribunals*, (1965) P.L. 321.
59. *Ibid.*
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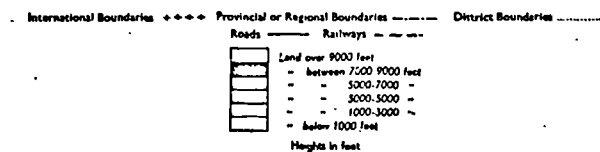
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64. Picho, Ali in 'Transition', No. 36, 1967.
65. The British Constitution.
66. E.g. Disciplinary Committees of the Medical Council, Law Society and Architects.
67. See Uganda Public Service Regulations, 1964 and Standing Orders, 1969; Opoloto v. The Attorney-General (1969) E.A. 4096.
68. For instance whether there is a contract of employment between a worker and his employer is a matter of private treaty, but whether the worker is being paid the minimum wage is of public interest.
69. Specific Acts govern advocates, architects on quantity surveyors, auctioneers, dentists and medical practitioners, among others, in East Africa.
70. Frank's Committee Report, *ibid.*
71. *Ibid.*
72. For its work see its Annual Report for 1970-71.
73. In Planning Law and Urban Problem, *ibid.*, p. 152.
74. Viera-Gallo, *ibid.*
75. Holmes, O.W. Law in Science and Science in Law, Collected Legal Papers, pp. 238-39, also at pp. 190, and 210.
76. Trubek, David, M.,: Max Weber on Law and the Rise of Capitalism, *op.cit.*, p. 721.
77. Frank, Thomas, M.,: The New Development: Can American Law and Legal Institutions Help Developing Countries, Report to the U.S.A. Agency for International Development (AID), Committee appointed under title IX of the Foreign Assistance Act of 1966 (22 USC. S. 2218 (1970)).
78. Chloros, A.G.,: Law and Society in 'Law', *op.cit.*, p. 7.
79. Quoted in the 'opening speech' of the University of East Africa, Social Sciences Conference papers, 1968/1969, Kampala.
80. The Code Napoleon is still the basis of French law in France and in ex-French colonies.



SK5188
 Pub. 1967 by Oxford University Press in association
 with D.A. Mackenzie Ltd. 1st ed.
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 Revised from map D.O.S. (1964) 299A and 299B

Scale 1:4,000,000

0 100 200 300 Miles



Printed by Survey of Kenya
 Road information supplied by Ministry of Transport
 in Kenya and Uganda and by Ministry of Transport,
 Power and Communications in Tanzania. 1st ed.
 Rev. and 1967

This map is one of a series of maps of
 East Africa. It is published by the
 Survey of Kenya.

EAST AFRICA: ITS PEOPLES AND RESOURCES

meaning of the word. In this paper therefore urban areas are defined as the towns with total populations of over 2,000 inhabitants. This definition has the advantages of being reasonably realistic by international standards and of facilitating comparisons with the 1948 census. Thirty-four towns were found to have total populations of over 2,000; their aggregate population amounted to 670,945 or 7.8 per cent of the total population of Kenya. Some two-thirds of this total consisted of the population of Nairobi (266,794) and Mombasa (179,575).

The relative smallness of the urban populations of all three East African countries constitutes an important feature of their demography. They are appreciably smaller not only than those of western industrialised nations but also than those of many Asian, South American or other African countries, which are still mainly agricultural, as is shown in Table 3.

Table 3.—PERCENTAGE OF URBAN AND RURAL POPULATIONS:
EAST AFRICA AND VARIOUS COUNTRIES

Country	Percentage Urban	Percentage Rural
Tanzania (1957-58)	4.9	95.1
Uganda (1959)	3.2	96.8
Kenya (1962)	7.8	92.2
Ghana (1960)	23.1	76.9
Congo (Kinshasa) (1955-57)	22.3	77.7
South Africa (1960) (African Population only)	31.6	68.4
Brazil (1960)	45.1	54.9
Mexico (1960)	50.7	49.3
India (1961)	18.0	82.0
Malaya (1957)	42.7	57.3
U.S.A. (1960)	69.9	30.1
England & Wales (1961)	80.0	20.0

Source: U.N. Demographic Yearbook, 1962, Table 9, to which reference should be made for the definition of the urban population in each of the countries.

The principal reasons for this low degree of urbanisation in East Africa lie in the fact that the rural indigenous peoples have never tended to live in clustered villages such as are found in most West African countries, but rather in scattered homesteads, each family living on its own holding. Thus whereas in West Africa the clustered villages gradually expanded into a system of indigenous urban areas, in East Africa no towns existed prior to the establishment of the British and German colonial administrations in the 1890s, with the exception of those founded on the coast by Arab, Persian and Indian traders.⁶

This fact may account also in part for the marked contrast between the urbanisation of the African and non-African communities. Whereas the percentages of the African population in the mainland territories enumerated in the towns were small, some half to three-quarters of the non-African populations were found in urban areas as shown in Table 4.

Table 4.—PERCENTAGE URBANISATION OF AFRICAN AND NON-AFRICAN POPULATIONS

Country	African	Non-African
Tanzania 1957-58	3.8*	72.1
Uganda 1959	2.3	72.5
Kenya 1962	5.3	84.8

*Includes "Afro-Arab" population of Zanzibar in 1958.

ASSUMED POPULATION PROJECTIONS TO 1989,
EAST AFRICA AND MAJOR CENTRES

TABLE 33

	<u>Estimated 1967 Pop'n.</u>	<u>Assumed Annual Increase (compound)</u>	<u>Approximate Projected 1989 Pop'n.</u>
Tanzania	10,700,000 *	2½%	18,000,000
Kenya	10,000,000	2½%	17,000,000
Uganda	<u>7,900,000</u>	2½%	<u>14,000,000</u>
East Africa	28,600,000		49,000,000
Dar es Salaam	270,000 *	6%	1,000,000
Nairobi	357,000	6%	1,300,000
Mombasa	241,000	6%	400,000
Kampala	74,000	6%	300,000

Source: P.P.A.L. Estimates

* The Census of 1967 published after the preparation of this study states a population of 12,500,000 (Tanzania)
and 272,500 (Dar es Salaam).

D

EAST AFRICA: ITS PEOPLES AND RESOURCES

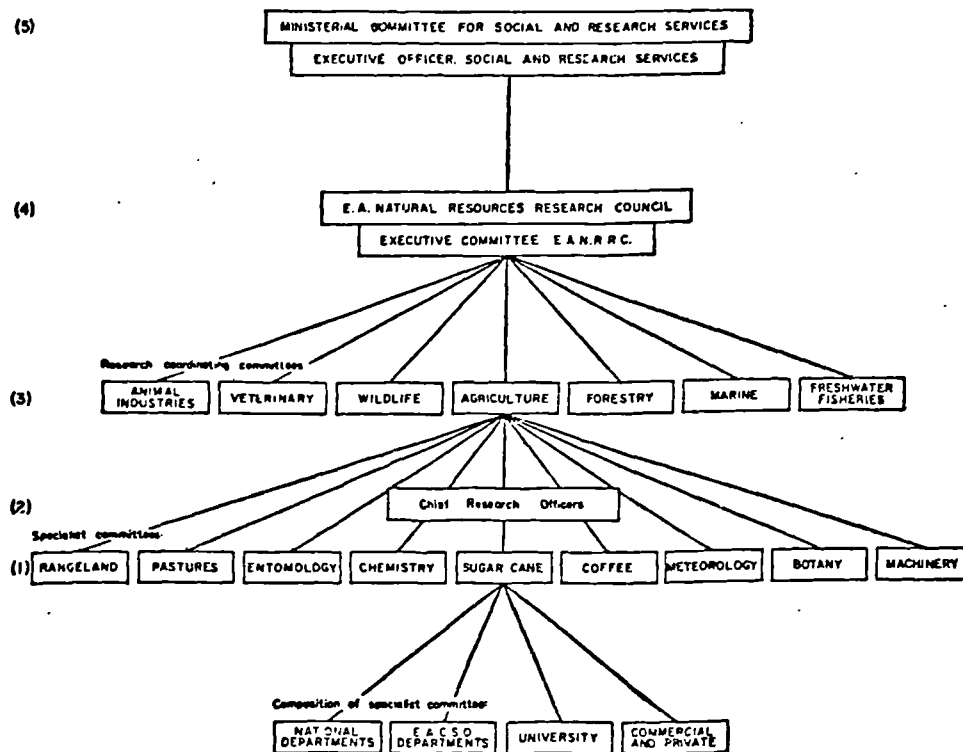


Fig. 18. Organisation of research through the Natural Resources Research Council.

EAST AFRICA: ITS PEOPLES AND RESOURCES

Table 26.—EMPLOYMENT BY INDUSTRY

	Agriculture	Mining and Quarrying	Manufacturing and repairs	Power, water and light	Building and Construction	Commerce	Transport and Communications	Other	Public	Total	Non-African	Total
KENYA												
1956	235.2	9.0	55.4	2.3	35.8	35.8	13.9	47.6	168.0			596.7
1960	271.8	5.0	52.3	2.5	21.1	39.1	14.8	54.2	161.4			622.2
1965	209.5	2.3	65.1	2.5	8.7	53.7	19.5	54.5	178.0			593.7
1966	210.8	2.8	65.9	2.7	10.2	53.0	28.0	76.3	185.2			603.1
UGANDA												
1957	56.1	5.5	25.0		9.0	35.2	10.4	12.3	72.7	226.9	13.8	240.6
1960	45.8	5.2	31.2		12.1	10.0	2.4	26.6	95.6	228.9	15.8	244.5
1965	42.6	6.3	37.6		10.7	12.4	3.7	33.4	95.0	241.7	13.5	241.7
1966									91.7	246.0	14.2	246.0
TANZANIA												
1957	209.1	17.5	19.0	N.A.	13.0	9.3	7.4	102.3	14.0	390.5	16.8	407.3
1960	199.0	11.1	18.3	N.A.	9.1	12.8	6.1	14.8	86.2	357.5	18.7	417.0
1965	139.2	7.2	25.7	4.8	31.5	17.8	26.4	81.2		333.8	17.4	351.2
1966	126.2	6.2	29.9	5.3	37.5	20.9	27.6	82.9		336.5		

Notes: 1. In each country the basis of calculation was extended between 1960 and 1965.
2. From 1965, Tanzania public sector figures have been distributed among other categories.

Sources: Statistical Abstracts; *Background to the Budget, Tanzania*; *Economic Survey, Kenya*.

materials — petroleum, plastics, iron and steel. The first and second of these are dependent largely on export markets, and the third and fourth on the development of local markets. The importance of size and availability of markets cannot be over-stressed. Thomas Balogh (1966), came to the conclusion:—

"At present industrialisation is hindered in most, if not all African countries, not only by poverty but also by the size of domestic markets. Even the largest countries in the region can hardly provide the basis for a large-scale industrial development on a broad front. Since the possibilities of increasing exports are limited, and since it is likely that the pressures for foreign exchange will increase considerably with development, it is likely that without a drastic change in policy, development will lead to severe balance-of-payments crises and depress the level of attainable living standards. There is some danger that national protection will favour small-scale industry, the establishment of which would imply a grave burden on the balance of payments relative to the increase in income and thus limit progress."

Industry has tended to congregate in Kenya, particularly around Nairobi, for a variety of reasons. Firstly, Nairobi is well situated, not only as regards her own market — with 60 per cent of Kenya's population living within 150 miles of the capital but also with ready communications to both northern

DISTRIBUTION Tanzania and to Uganda. Industries situated in either Tanzania or Uganda must face serious transport costs to each other.

Secondly, Kenya had a far larger proportion of expatriates, whose skills were basic to setting up industries; an already established industrial sector, coupled with a climate attractive to expatriates, acted as a magnet to other industries backed by

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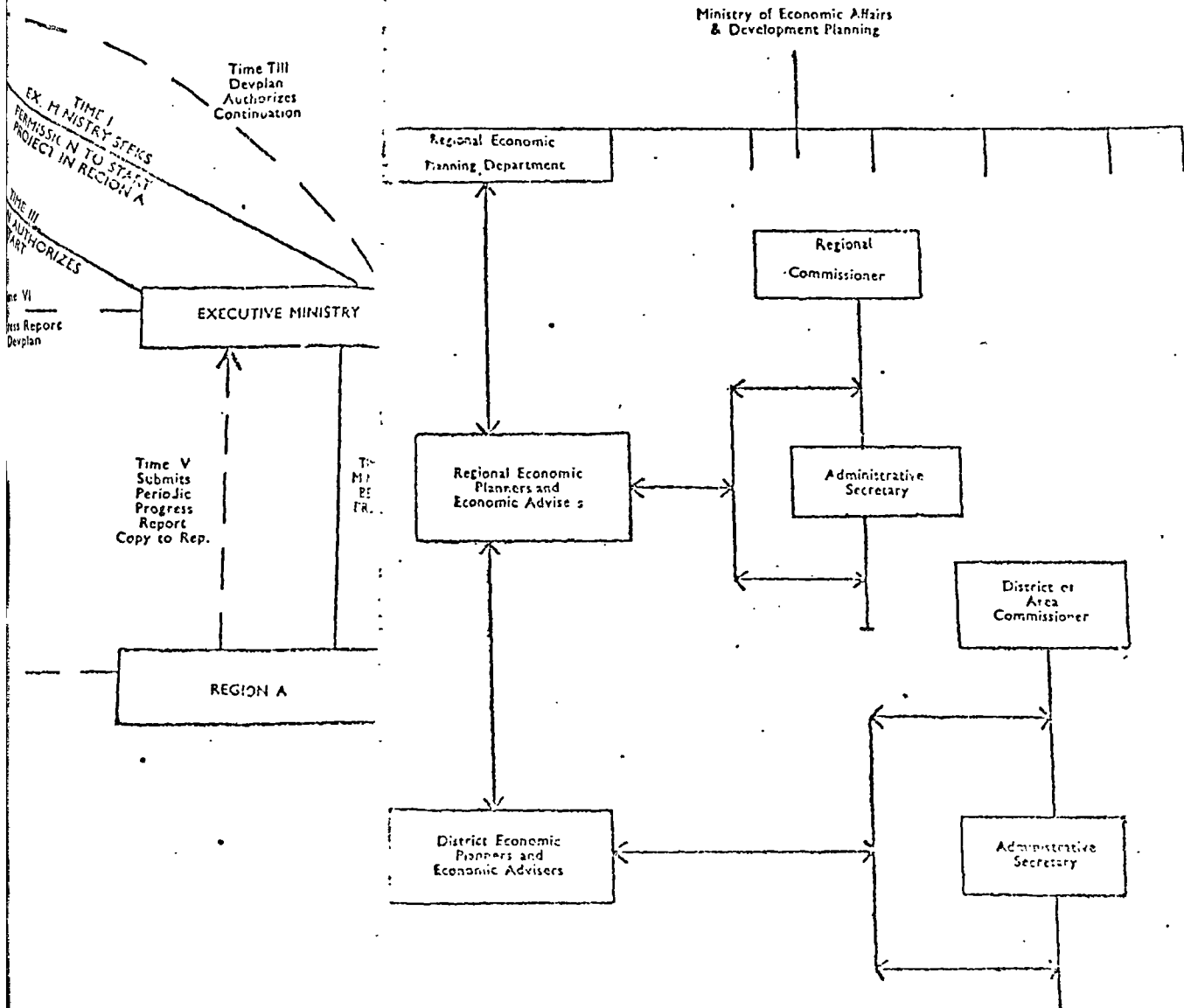
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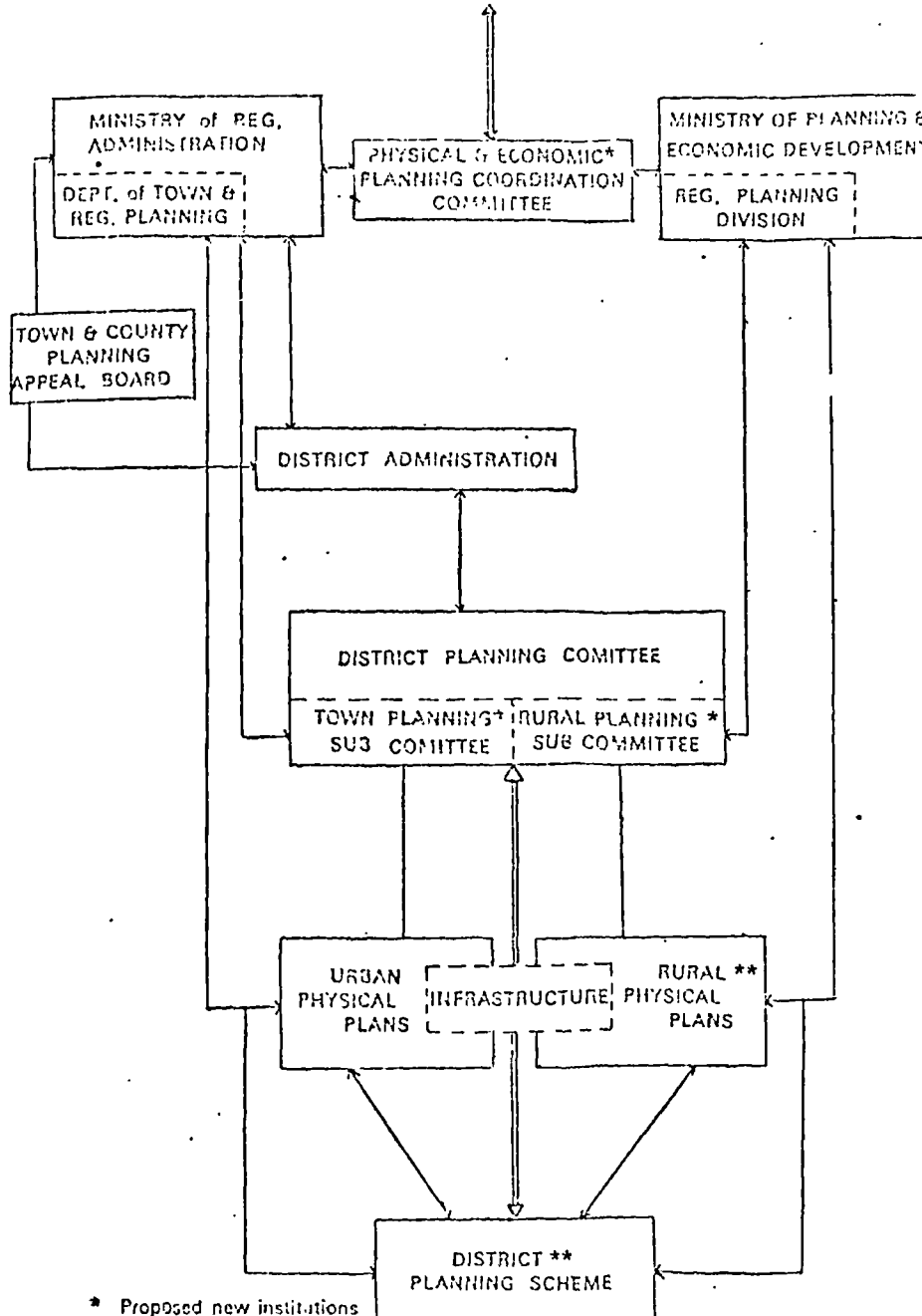
ELABORATING THE ROLE OF
INITIATOR AND SUPERVISOR.

LINE AND STAFF FUNCTIONS OF
REGIONAL AND DISTRICT ECONOMIC PLANNERS



PLANNING COORDINATION MODEL

NATIONAL PLANNING COMMISSION



REG
PRACTIC
1

Town Planning De

Physical Planning at nation in 1966, when government direct ment plans be prepared by the T Lands and Settlement in close Planning and Development. Since two draughtsmen have been em studies.

The initial objective of the I hensive Planning Survey and Rep study was completed in July 1967. ces, the semi-arid North-East beir

Central Province Study.

The Central Province was se its proximity to the Department's vince is compact, fairly densely po.

Central Province is approxir covers an area of 8,160 sq.km. of forests and national parks, and j which is mainly deep valleys and and settlement pattern of the Pro rural zones and transportation ne

In 1962 the Central Provinc giving an average density of 165 p sq.km. to 750 persons/ sq. km. in t these rural densities represent a gr the inevitable natural increase in holdings inadequate for even min ulation and employment demands on other land or in new or enlarge

On the other hand, to maint at their existing low level, by say seven hospital beds will be requir school places for every four in 1962 By the year 2000 this rate will have 1962. Thus even to maintain the pre expenditure will be required. If for c to present Western European stan sent birth rate continues, no less th four available in 1962.

H

	Economic Committee					
Dar-es-Salaam Development Committee	Minister of Economic Affairs and Development Planning	Minister of Lands, Settlement and Water-Development				Minister of Health and Housing
		Town Planning Division	Lands Division	Survey Division	Valuation Division	
		Land Registry Division				
		National Housing Corporation				
						City Council (Urban Planning Committee).

All these institutions participate in the 23 stages which are necessary.

1st stage: Proposals of the Urban Planning Committee within the Master Plan. This stage is decided by the Economic Committee of the Urban Planning Committee.

2nd stage: Discussion of the necessary rephrasing of the next budget. Final Affairs and Development Planning.

3rd stage: Decision of the Urban Planning Committee over the area which belongs to the Minister of Lands, hereinafter called Ministry of Lands.

4th stage: If the selected area is not yet located the necessary plans and to prepare the town planning division.

5th stage: The town planning division consider the limitations prescribed by the finance which divides Dar es Salaam in But these requirements are changed by the 7th stage.

6th stage: Elaboration of a feasibility study. 8th stage: Lands Division finds out the requirements of the Ministry.

9th stage: The Minister of Lands decide the area. The basis for this decision. There are some disadvantages because pull down his house and to build a new one he cannot change the boundaries of the area to discuss these legal aspects.

10th stage: If the Minister takes over the Lands Division has to calculate and to occupy.

11th stage: Clearance of the plots and the N.H.C. by order of the Lands Division.

12th stage: Preparation of a deed plan by the Lands Division.

13th stage: Valuation of the new plots by the Lands Division.

14th stage: Preparation of the certificate of occupancy by the Lands Division.

15th stage: Registration of the occupancy by the Lands Division.

16th stage: Selection of a candidate for the Urban Planning Committee.

17th stage: Minister of Health and Housing built in the selected area.

18th stage: Demand for Planning consent by the N.H.C.

19th stage: Urban Planning Committee decision.

20th stage: Building Permit by the City Council. 21st stage: Types of the N.H.C., but if new houses it will be necessary.

TABLE A PROJECTIONS OF URBAN POPULATION FOR YEAR 2000 UNDER GIVEN ASSUMPTIONS OF POPULATION AND ECONOMIC GROWTH

MODEL	Population Assumption		Economic Assumption				Implied Population Distribution				Urban Population Projection			COMMENTS	
	Total Year 2000 2000	Demographic Index	Total Annual Growth Rate of G.D.P. 1964-2000	Gross G.D.P. 2000	Agric. Prod. 2000 1964-76	Implied Non-Agric. Prod. 2000	Non-Agric./Agric. Gradient GDP/Caput.	Agricultural Pop. million	Per Caput G.D.P. £	Non-Agricultural Pop. million	Per Caput G.D.P. £	% Non-Agric. Urban.	% of Non-Agric. Urban.		Projected Urban* Population million
1 (Norbyc)	24	Steady declining birth-rate declining mortality	7.3%	3,500M	670M	2,800M	6.2:1	14.3*	47	9.7*	292	40.4	80	7.76	Urban job formation not sufficient to absorb all Natural Population increase — Rural Population doubles. Steep urban/rural G.D.P. Caput gradient — Tendency to urban drift.
2 (Low Pop Growth)	16	Rapidly declining birth-rate declining mortality	8%	4,423M	670M	3,753M	3:1	5.5	120	10.5	360	65.6	90	9.45	High Urban income—High standard of development. Strong "Pull" to Towns. Towns absorb all Natural population increase. Rural Population declines slightly.
3 (High Pop Growth)	30	Constant birth-rate declining mortality.	6%	2,260M	670M	1,590M	6:1	22.3	30	7.7	180	25.7	70	5.39	Low Urban Income—Low standard of development. Urban unemployment high — Agricultural areas overpopulated. Towns grow by "Push" from rural areas.
4 (Low Econ Growth)	24	Same as Model 1	4%	803M	336M	467M	4:1	17.8	19	6.2	75	25.8	70	4.34	Economic Growth barely keeps pace with population growth. Average wealth per caput barely higher in 2000 than 1964. Rural population triples. Urban standards mainly low income.
ACTUAL 1964	9.404	—	—	277M	112M	165M	3.8:1	6.5	17	2.6	64	28.5			

* Definition of Urban — Towns of more than 2000 inhabitants.
 — Native's unemployed and underemployed split 50/50 between agricultural and non-agricultural sectors.
 * 7.3% is the overall rate of growth. Notby uses 6.3% 1964-70; 7% 1970-85; 8% 1985-2000.
 † In this model of low economic growth a three-fold increase only in agricultural product is assumed.

Table V Population, Population Density, Cash Crop Production and Stability of the Urban Population in Kenya

Table V Population, Population Density, Cash Crop Production and Stability of the Urban Population in Kenya															
A = African E = European (according to Soja)	District	Density per s.k. 1969	Town		%Δ1962-69 Population in named districts and towns summed by Province	Table IV Cash crop col 3 x col 5		1962/1969 Male/Female sex ratio per 100 pop.							
			Density per s.k. 1969	Density 1962-1969		rank	Town rank	rank	Towns		Δ 1962-9 Town	Δ 1962 Dist.			
									1962	1969					
Nairobi	734	399	734	399	31	2	83	1	1.1	6	187	147	-40		
Western					43		50					n.a.	130		
A Kakanaga	220	25	767	267	16		100					n.a.	132		
A Bungoma	113	24	2,854	1,000								n.a.	133		
A Busia	119	29			27	4	31	4	3.9	4					
Nyanza															
A Central Nyanza/	174	37	1,668	405	27		33					158	129	-29	+5
Kisumu	304	38	2,156	490	26	1	20	6	9.4	1		154			
- Kisii					33		16								
Rift															
E Uasin Gishu/	50	28	628	128	100		33					134	127	-7	+1
Kitale					44		-10					145	130	-5	-1
E Trans Nzoia/	50	20	739	-51	13		24					150	124	-26	-1
E Eldoret/	40	4	1,456	268	27		25					162	140	-22	-3
E Nakuru	97	27	979	179	25	6	43	2	7.0	2					
E Kericho					97		40								
Central					n.a.		29					151	145	-6	n.a.
E Nyandarua/	54	34	609	154	26		0					n.a.	133		
Malindi	184	-29	1,217	284	31		25					162	150	-12	+2
E Thika	108	-56	1,880	1,120	27		0					184	135	-49	0
A Kiaru	196	76	1,349	206	27		17	5	2.7	5					
A Nyeri					26		50								
A Murang'a/					17		-20					136	160	+24	+1
Fort Hall					51		33					n.a.	165		
Eastern					29		39								
A Machakos	50	13	325	115	27		37					151	140	-11	+1
- Embu	62	-8	1,314	-352	24		67					132	141	-4	
- Meru	63	15	2,431	931	24		83						128		
Coast					24										
E Mombasa	1,155	622	1,155	314	27		37								
- Taita/Voi	6	0	653	278	24		67								
- Kilifi/Malindi	24	5	603	270	24		83								

It to n.a.s result from boundary

K

Wage distribution of regularly employed African males, and tax returns
of African population, Nairobi (per cent)

Wages or Income (Shs pm)	African adult males 1963	African tax returns 1964
160 or less	71	47
161-240	12	23
241-340	9	11
341-520	5	8
521-700	1	4
701-860	1	2
861-1000	0.5	1
1000 & over	0.5	4

Note: Tax returns are very likely to have been under-enumerated at the lower-income end of the distribution.

Source: Bloomberg and Abrams; op.cit.; para 99 page 19.

Table 3

Income distribution of applicants on Nairobi City Council housing waiting
list March 30th 1968

Income (£ pa)	Income (Shs pm)	Number of applicants	
		(No.)	(per cent)
up to 300	up to 500	13,456	53.6
301-600	501-1000	5,594	22.2
601-900	1001-1500	3,478	13.8
901-1200	1501-2000	1,419	5.7
1201-1500	2001-2500	557	2.2
over 1500	over 2500	596	2.4

Source: N.O. Jorgensen; Some Aspects of Housing Policy and Rent Structure in Kenya; U.N.E.C.A. E/CN.14/HOU/55.

L

Table 1

Distribution of regular employees in modern sector by income, 1968.
(per cent of employees) (a)

Income (&pa)	Income (Shs pm)	Nairobi	Other towns	Kenya
0-99	0-165	1.9	5.3	18.0
100-149	167-248	3.3	4.6	11.6
150-199	250-332	6.6	13.9	11.4
200-299	333-499	35.1	29.7	23.0
300-399	500-665	12.3	12.3	10.5
400-599	667-998	11.9	12.7	9.7
600-999	1000-1665	10.1	9.9	6.2
1000-1499	1667-2498	7.7	5.9	4.3
1500-1999	2500-3332	4.1	2.5	2.1
2000-3999	3333-6665	5.1	2.5	2.4
4000 & over	6667 & over	2.1	0.7	0.8

Note: a) These data appear to be biased upwards by the addition of all races in the modern sector, compared with the desired distribution for the total relevant population. Under-enumeration must be particularly significant amongst African employees, especially those in lower income groups.

Source: Ann-Margret Vukovich; Wages and Earnings in Modern Sector Employment, Kenya and Nairobi 1964/70. Nairobi Urban Study Group, draft report. Data were obtained from the Ministry of Finance and Economic Planning.

M

Shanty clearance and other dwelling depletion in Nairobi

Location and date (source)	No. of people affected
1. Pumwani re-development (NCC) NCCK report 1968/69	10,000 over period
2. Eastleigh (NCC) Daily Nation 19/3/68	?
3. Eastleigh (NCC) E.A.Standard 21/12/68	100 dwellings
4. Kaburini (Fire) E.A.Standard 21/12/68	4000
5. Nairobi River (NCC) E.A.Standard 3/5/69	?
6. Kaburini (Fire) E.A.Standard 26/6/69	6000
7. Nairobi River (NCC) E.A.Standard 4/9/69	200 dwellings
8. Eastleigh (Fire) E.A.Standard 2/1/70	98 dwellings
9. Kaburini (NCC) E.A.Standard 22/1/70	"Hundreds of families"
10. Kaburini and Nairobi River (NCC) 26/1/70	?
11. Pumwani (Fire) E.A.Standard 31/1/70	200 families
12. Kaburini (NCC) E.A.Standard 6/2/70 and 16/2/70	2000 families removed Karura Forest
13. Eastleigh (NCC) E.A.Standard 17/11/70 and 18/11/70	5000 families?

Note: It would appear that some of the estimates of people affected are exaggerated. This table does give some impression of the pattern however.

N

Housing Investments and Returns of Commonwealth Development Corporation
(£ thousands)

<u>A. Global</u>	1969	1970
Total Committed	157,100	171,600
Total Invested	129,300	138,300
Housing Committed	30,000	35,000
Housing Invested	22,000	25,000

B. Kenya

(i) Valley Field (investment at end 1970 c. £741.8 thousand)

Net trading profit	36.6	79.7
--------------------	------	------

(ii) Housing Finance Company of Kenya (investment at end 1970 £414.2 thousand)

Interest	-	21.4
Dividends	-	1.5

(iii) Nairobi City Council (investment at end 1970 £838.1 thousand)

Interest:		
Kariakor (£125,000)	9.4	9.2
Kiburu Water Diversion (£125,000)	4.4	3.4
Sasamua Dam (£300,000)	26.6	26.4
Woodley-Kibera (£400,000)	28.1	31.5

(iv) National Housing Corporation (investment end 1970 £1,120 thousand)

Interest	71.5	66.9
----------	------	------

Source: Commonwealth Development Corporation, Annual Report 1970:

A Figure 3 page 20

B Statement 4 and pages 87-88.

of Uganda's population lived in towns with over 2,000 people each, compared to 2.4 per cent in 1959. The number of towns in this category had itself increased from 18 in 1959 to 31 in 1969. The relative importance of the different urban areas in absorbing emigration from rural areas can be seen in Table VII--5.

The Population of the Main Urban Areas*

Towns	Population (1969 Census)	Inter-Censal Percentage Growth 1959-1969	Percentage of total urban population in 1969
Kampala	331,889	8.2	49.93
Entebbe	21,176	6.6	3.18
Masaka	13,008	10.0	1.96
Jinja	47,298	4.6	7.12
Bugembe	48,054	n.a.	7.23
Tororo	14,136	8.0	2.13
Mbale	23,539	5.5	3.54
Soroti	12,330	6.2	1.85
Moroto	8,264	13.8	1.24
Lira	7,338	9.2	1.10
Gulu	19,707	14.2	2.96
Arua	11,099	8.7	1.67
Kilembe	13,673	n.a.	2.06
Fort Portal	8,278	0.0	1.24
Kasese	7,145	15.2	1.07
Kabale	11,239	n.a.	1.69
Mbarara	10,273	9.8	1.54
Other Towns† ..	56,267	0-18.1	8.46
TOTAL ..	664,713	7.76	100.00‡

* Towns with a population of over 2,000 each in 1969, Provisional Census results.

† Other Towns over 2,000 population: Mpigi; Njeru; Mukono; Nyendo; Mityana; Mubende; Iganga; Magamaga; Kamuli; Bundibugyo; Hoima; Masindi; Rhino Camp; Moyu; Kitgum.

‡ Figures do not add to total because of rounding.

7.15 Although some of the smaller towns (such as Kasese, Gulu, Moroto) have experienced much higher population growth rates than Kampala, it is Kampala which, because of its size relative to other towns, has harboured the big bulk (39 per cent) of the increase in total urban population. It is, however, to be noted that the population in all individual towns covered in Table VII--5 grew considerably faster than total population. The causes of rural to urban migration are in general no different from those observed in other countries. People are attracted to towns because they imagine that income earning opportunities are greater there, and also because they seek to enjoy the much more abundant cultural, social, recreational and other amenities available in the towns. The weakening of family ties which normally accompanies economic development greatly aids the movement of people from country to town. Rural to urban migration has also been fostered by the primary education system which generally orients young persons to clerical and other urban occupations rather than to the needs of the rural economy.

II.

7.16 As stated in the regional development policy there is a mix of economic, natural and other attributes and services available, enabling an increasing standard of living in the country." This implies, in a possible manner, contributing in the benefits of that regional development policy of each region's potential and causing the type of regional development preceding section. The basic

(i) an uneven distribution of agricultural land and favourable

(ii) the unequal capacity for economic and social services, most important,

(iii) the lack, in the past, to cater for the regional requirements

A. Rural Development

7.17 The question of rural development as a problem. As the bulk of the population is quite obvious that there is inadequate expansion in rural areas identified with well-developed farming being the predominant element takes on the character of a phenomenon. Rural development is an issue of regional development for the exploitation of a determined geographical area relates to the distribution of population in a defined geographical region and residents in other areas.

7.18 The key to rural development activities carried out in rural areas, devoted to a discussion of measures relating to this aspect of the structural economic service of Two of this Plan is also a section. While all these measures are total, thus enhancing rural

TABLE A-II
1971/72 DEVELOPMENT EXPENDITURE ESTIMATES AND PLAN III PRIORITY SPENDING

MINISTRY/VOTE	1 1971/72 Development Expenditure Estimates	2 Re-organisation, Addition and Deletion of Expenditure	3 Estimated Plan III Development Expenditure 1971/72 (i.e. 1-2)	4 High Priority Allocation	5 Column 3 Column 4 %
President's Office ..	Shts. '000 1,401	Shts. '000 -1,499	Shts. m. 1.9	Shts. m. 24.0	7.9
Industry ..	—	—	—	13.4	—
Public Service and Cabinet Administration ..	5,001	+480	5.5	40.0	13.8
Local Administrations ..	13,304	-13,188	.1	5.0	2.0
Co-ordination to L.A.L.F. ..	—	—	—	57.0	—
Provision of ..	6,000	-6,000	.6	3.0	20.0
Attorney-General's Chambers Time and Planning ..	54	-44	(.010)	.1	10.0
Contribution to L.A.L.F. ..	1,633	+2,560	4.2	43.2	9.7
Acquisition and Forestry ..	40,104	+98,949	139.1	624.2	22.3
Armed Forces, Game and Hunting ..	50,841	-929	49.9	225.3	22.1
Co-operatives and Co-operatives Institutions ..	40,977	-1	50.0	268.3	18.6
Transport ..	16,793	-9,842	7.0	16.1	43.5
Health ..	2,821	—	2.8	29.6	9.5
General and Water Resources Education ..	4,764	-4,764	—	—	—
Health ..	23,819	-8,180	15.6	98.4	15.9
Culture and Community Development ..	43,370	-892	42.5	235.3	18.1
Works and Planning ..	19,994	—	19.1	183.7	10.4
Water and Communications ..	7,653	-158	7.5	52.2	14.4
Information and Broadcasting Labour ..	81,955	-10,333	71.6	371.1	19.3
Internal Affairs ..	15,541	—	15.5	120.8	12.8
Finance ..	10,614	-2,101	8.5	55.6	15.3
Education ..	1,521	-1,521	1.5	15.5	9.7
Student Expenditure ..	26,024	-2,650	17.4	218.2	8.0
Unallocated Balance ..	160,000	-160,000	—	—	—
	2,060	-2,660	—	509.0	34.5
TOTAL ..	579,561*	-453,301	632.9	3,200.0	19.8

Footnote: 1. * Corresponds to the estimate of development expenditure in the 1971/72 Financial Statement.

8.12 In all other sectors, Government will continue to expand services where there is a clear need for doing so, and with special emphasis on services in the rural areas where the bulk of the population lives. In planning these services, very special care will be taken to ensure that such services are equitably distributed over the country, and that services are provided at the least cost commensurate with effectiveness. Notwithstanding the strategy which is outlined in this and the preceding paragraph, Government's initial attention will be devoted to the completion of all those projects on which it has incurred specific legal and financial commitments.

8.13 The entire list of Plan III Government projects is contained in Appendix I. Table VIII—4 and Table VIII—5 summarise the total cost of the "bank" and "high priority" projects. Although the subject matter of the Chapters of the Plan do not correspond closely to a sectoral classification of economic activities, a broad approximation of the sectoral allocation of expenditure may be obtained from Table VIII—4, which summarises Government development expenditure on projects described in the various chapters of the Plan. Table VIII—5 summarises by Ministry the total cost of the projects identified in the chapters.

—Development Expenditure (by Plan Chapter)

(Shs. million)

Plan Chapter*	"Bank"	"High Priority"	High Priority on Target Development Expenditure
			%
Population	1.0	1.0	—
Manpower and Employment	4.5	3.5	0.1
Regional Development	81.0	51.0	1.6
Allocation and Financing of Public Sector Expenditure	10.0	10.0	0.3
Functions and Machinery of Planning	20.0	10.0	0.3
Rural Production	878.3	677.0	21.2†
Manufacturing, Mining and Construction	352.8	338.3	10.6
Tourism and Wildlife	62.3	49.3	1.5
Commerce and Financial Institutions	52.0	52.0	1.6
Transport and Communications	761.1	489.3	15.0
Water	173.7	159.8	5.0
Health Service	267.8	183.5	5.7
Education	339.6	246.9	7.7
Housing	48.0	35.0	1.1
Community and Information Services	145.1	101.8	3.2
General Administration and Security Services	481.0	299.8	9.4
TOTAL	3,678.2	2,699.2	84.4‡
Undeclared Balance (Paragraph 8.9)	—	500.0	15.6
Target Development Expenditure (Table VIII—3)	—	3,200.0	100.0

Notes:—

*Plan Chapters which do not contain a provision for Government development expenditure are not listed in the Table.

†The difference of Shs. 0.2 million between the totals in Table VIII—4 and Table VIII—5 is explained in Appendix I.

‡Figures do not add to total because of rounding.

R

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Development Plan

	Foreign	Local	\$ million Total
Central Government of which ..	50	40	90
a) Taxation	—	30	30
b) Borrowing (including foreign grants)	50	10	60
Parastatal	20	40	60
Private	15	75	90
TOTAL ..	85	155	240

The Government has been, and expects to continue, receiving assistance from a wide variety of donors, both multilateral and bilateral. The range of sources and the amounts they are expected to give for the plan period only can be gathered from the estimated figures in the *Background to the Budget* 1968-69.³⁰

Background to the Budget

			Shs. million.		
Donor/Agency			Total Loans and Grants on offer	Total Loans and Grants Committed	Total Loans and Grants Uncommitted
on offer	Committed				
1. Multilateral:	182	132	56	
I.A.D. A.D.B.	2	—	2	
U.N.D.P./S.F.	45	45	—	
U.N.H.C.R.	4	4	—	
TOTAL	239	181	58	
2. Bilateral:				
Peoples' Republic of China	100	14	86	
U.S.S.R.	112	108	4	
Yugoslavia	80	6	74	
Japan	20	5	15	
Denmark	19	15	4	
Hungary	6	—	6	
West Germany	54	54	—	
U.S.A.I.D.	71	68	3	
U.K.	104	104	—	
TOTAL	566	373	193	
3. Non-Official	39	39	—	
GRAND TOTAL	844	593	251	

Plan III: Recurrent Expenditure (Net): Economic Classification.

Ceilings
(Shs. million)

(Shs. million)

	1971/72	1972/73	1973/74	1974/75	1975/76	Annual Average Growth Rate 1971/72 1975/76
1975/76 Forecast Out-turn						
19.9						
13.6						
30.1						
50.3						
1.7						
25.3						
4.3						
46.9						
83.4						
43.2						
24.2						
20.9						
398.2						
122.4						
22.8						
76.7						
15.4						
4.6						
149.3						
182.7						
4.9						
44.0						
218.2						
77.1						
1,687.1**						
Consumption ..	1,084	1,121	1,220	1,285	1,392	6.4
Transfers paid ..	175	183	193	202	213	5.1
Public Debt Charges ..	139	174	171	214	218	11.8
Less: Appropriations-in-Aid ..	122	128	134	141	148	5.0
Recurrent Expenditure (net) ..	1,276*	1,350	1,450	1,560	1,675	7.2

* Corresponds to the estimate of recurrent expenditure contained in the 1971/72 Financial Statement but includes in addition contractor finance payments entered on the development expenditure account of the 1971/72 Financial Statement.

III. Financing of Government Expenditure

8.26 *Work for Progress* envisaged two major sources of finance for the Government expenditure programme. First, recurrent revenue was to expand considerably both to finance the growing public services, and to enable a significant recurrent budget surplus to be generated for transfer to the development budget. The second source, which for the development budget was highly significant, was envisaged to be the utilisation of various forms of external assistance. Domestic borrowing was not envisaged as a major source of finance. The out-turn, which is summarised in the case of the development account in Table VIII—8, diverged somewhat from the Plan forecast. By 1970/71, recurrent revenue was less, and recurrent expenditure more, than the Plan had forecast; and Government had borrowed from domestic sources considerably more than had been envisaged. The increase in domestic borrowing was necessary to offset both the shortfall in receipts from external sources and the inability to realise the planned surplus on recurrent account. Generally speaking, the heavy short-term domestic borrowing incurred in the latter years of the Plan financed the excess of development expenditure over the Plan forecast.

Table VIII—8. Financing of Second Five-Year Plan: Development Expenditure.

(Shs. million)

Item	Planned	Per cent	Out-turn	Per cent	Out-turn on Plan per cent
INTERNAL	500	44	1,518	72	190
Transfer from recurrent budget ..	500		408		82
Borrowing (long, medium and short term)	200		958		479
Other	100		152		152
EXTERNAL	1,000	56	592	28	59
Borrowing	800		547		68
Grants	200		45		23
TOTAL	1,800	100	2,110	100	117

T

Recurrent Expenditure (Net)—Ministerial Ceilings

(Shs. million)

Ministry/Vote*	1971/72 Estimates	Ceiling Growth Rate per cent per annum	1975/76 Forecast Out-turn
President and National Assembly	17.0	4.0	19.9
Judiciary	11.6	4.0	13.6
Public Service and Cabinet Affairs	25.7	4.0	30.1
Local Administrations§			
• Block Grants to Local Administrations	30.9	13.0	50.3
Audit	1.5	3.0	1.7
Foreign Affairs	21.6	4.0	25.3
Attorney-General's Chambers	3.7	4.0	4.3
Finance and Planning	33.6	5.0	46.9
Agriculture and Forestry	61.3	8.0	83.4
Animal Industry, Game and Fisheries	31.8	8.0	43.2
Commerce and Co-operatives			
Industry	19.2	6.0	24.2
Tourism			
Mineral and Water Resources	17.2	5.0	20.9
Education	292.8	8.0	398.2
Health	102.7	6.0	129.4
Culture and Community Development	18.1	6.0	22.8
Works and Housing	56.4	8.0	76.7
Power and Communication			
Information and Broadcasting	12.7	5.0	15.4
Labour	3.8	5.0	4.6
Internal Affairs	114.0	7.0	149.3
Defence	145.0	6.0	182.7
Specified Officers Salaries and Allowances‡	4.3	3.0	4.9
Pensions and Gratuities†	38.9	3.0	44.0
Public Debt Charges¶	138.6	11.8	218.2
Contributions to E.A.C.¶	68.2	3.0	77.1
TOTAL	1,275.6	7.2	1,687.1**

*Corresponds to the present allocation of Ministerial and Statutory responsibilities.

§All recurrent expenditure other than block grants to local authorities.

‡Consolidated Fund Services (CFS) Votes 1 and 2.

†CFS Votes 3, 4 and 5.

¶CFS Vote 6, including contractor piece payments.

¶CFS Vote 7.

**The difference between this figure, and the Plan forecast of (Shs. 1,675 million) of next recurrent expenditure in 1975/76 is due to rounding.

the Plan will have a varied impact on the growth of recurrent expenditure, and as far as possible, this has been allowed for in the Ministerial ceiling growth rate figures specified in Table VIII—6.

8.25 Government consumption on the recurrent account will grow at a rate lower than monetary G.D.P. at current prices. Transfers paid, which cover such items as block grants to the Local Authorities, contributions to the East African Community, scholarships, pensions and gratuities, will grow reasonably slowly, with the important exception of block grants to Local Authorities. Appropriations-in-Aid are assumed to grow at the same rate as recurrent revenue at existing rates. Both the public debt charges, to which reference is made in paragraph 8.22, and Appropriations-in-Aid exclude debt charges in respect of loans on-lent to Government corporations.

Table VII—7. Plan III

	19
Consumption	1
Transfers paid	
Public Debt Charges	
Less: Appropriations-in-Aid	
Recurrent Expenditure (net)	

* Corresponds to the estimate but includes in addition account of the 1971/72 F

III. I

8.26 Work for Pro. Government expenditure considerably both to significant recurrent development budget. It was highly significant, of external assistance, source of finance. The development account forecast. By 1970/71, more, than the Plan domestic sources consist in domestic borrowing from external sources recurrent account. Government incurred in the latter expenditure over the P

Table VIII—8. Final

Item	
INTERNAL	
Transfer from recurrent	
Borrowing (long, medium term)	
Other	
EXTERNAL	
Borrowing	
Grants	
TOTAL	T

Second Five Year Plan—Development Expenditure by Ministry.

(Shs. million)

Ministry*	Planned Expenditure†	Out-turn‡	Out-turn on Planned (%)
Office of the President, Public Service and Local Administrations	60.9§	103.2	178
Judiciary	23.1	2.9	13
Foreign Affairs	19.2	92.7	483
Attorney General's Chambers	2.4	2.3	96
Finance	1	26.5	—
Commerce, Industry and Tourism	11.9	14.4	121
Agriculture, Forestry and Co-operatives	151.7	193.8	128
Animal Industry, Game and Fisheries	197.1	127.5	65
Mineral and Water Resources	49.2	84.7	172
Education	237.3	189.3	80
Health	148.9	191.3	128
Culture and Community Development	27.1	33.7	124
Works, Communications and Housing	338.6	355.3	105
Information and Broadcasting	42.1	18.2	43
Labour	12.4	7.0	56
Internal Affairs	181.9	53.7	30
Defence	142.9	243.5	170
Planning and Economic Development	—	6.8	—
Contributions to the Government Corporations¶	152.6	339.3	222
Statutory Expenditure	—	18.4	—
TOTAL ..	1,799.4	2,109.5	117

* The Plan and out-turn figures have been arranged to correspond to the allocation of Ministerial responsibilities at the end of the Second Plan.

† Expenditure figures are based on the allocations in the Supplement of Projects to the Second Five-Year Plan, reduced to correspond to the Plan Trend Target for Development Expenditure

‡ Sum of actual expenditure 1966/67, 1967/68, 1968/69, 1969/70 plus forecast out-turn for 1970/71.

§ Excludes expenditure on Kampala and Jinja Water and Sewerage Schemes.

¶ Includes expenditure incurred in the construction of Nile Hotel, and International Conference Centre, Kampala.

¶ Contributions through the Local Investment Fund; other contributions to Government Corporations; and acquisition of shares in participating companies.

immediate past cannot be taken as a guide to an appropriate level of development expenditure in Plan III. In general the dominant constraints on an expansion of expenditure in the Second Five-Year Plan were the availability of non-inflationary financial resources, and the managerial and administrative capacity for designing and implementing projects. It is expected that these constraints will continue to impose limitations on the level and allocation of development expenditure during the Plan III period.

8.5 During Plan III, Government will limit development expenditure to a level determined by the availability of financial resources. In section III below, the sources of finance for development expenditure are examined, and estimates are made of the magnitude of resources that are expected to be available to Government for development spending. On the basis of these

estimates, the Plan 4 million, phased as follows

Table VIII—

Target	—
----------------	---

* Corresponds to the estimate Statement, amended as

8.6 The coverage Expenditure to be in which work is already projects initiated in the the expenditure relation In addition to non expenditure for the public is participating, allocated Authorities Loan Fund development account. finance and similar as development expenditure in the Public Debt between the Plan and budgetary concepts of being made to remove

8.7 The full cost to Shs. 3,679.0 million. The higher of those projects which "bank" consists of pre capacity to design, and cost-benefit analysis. However, for various cannot be implemented be added to the list, implementation, partly because of delays in be carried over to the should be regarded as projects than available spending is not based of the various projects strategy of the Plan, the project in question

	Special Building	Special Industrial Building	Heavy Industrial Building	Light Industrial Building	Food Processing Industrial Building	Warehouse and Storage Building	Business Premises	Commercial Premises	Public Buildings	Watchman's and Caretaker's Quarters	Residential Buildings	Block of Flats	Special Block of Flats	Terrace of Houses	Double Dwelling	Dwelling	Key:
																	<p>P. Permitted use in the particular Zone subject to the provision of the Scheme</p> <p>X. Indicates use not permitted in that particular zone</p> <p>Sc. Indicates use not permitted but special consent may be granted by the Committee for use in that particular zone.</p> <p>* Hotels only and in relation to light industries plots fronting on to Osojo Road development shall be restricted to such light industrial uses as Committee may specifically approve, and development shall in all cases provide the erection of show room on full frontage of the plots.</p>
Dwelling A	Sc	X	X	X	X	X	Sc*	X	Sc	X	Sc	Sc	X	X	X	P	
Dwelling B	Sc	X	X	X	X	X	Sc*	X	Sc	X	Sc	Sc	Sc	Sc	P	P	
Dwelling C	Sc	X	X	X	X	X	Sc*	X	Sc	X	Sc	Sc	Sc	Sc	P	P	
Dwelling D	Sc	X	X	X	X	X	Sc*	X	Sc	X	Sc	Sc	Sc	Sc	P	P	
General Residential	Sc	X	X	X	X	X	Sc*	X	Sc	Sc	Sc	P	Sc	Sc	Sc	X	
General Settlement																	As Determined by the Committee
Commercial	Sc	X	X	X	X	X	P	P	Sc	X	Sc	Sc	X	Sc	X	X	
Centre																	As Determined by the Committee
Industry	Sc	X	X	X	X	X	Sc	Sc	Sc	X	Sc	Sc	X	X	X	X	
Industry	Sc	Sc	Sc	Sc	Sc	Sc	Sc	Sc	X	Sc	Sc	Sc	X	X	X	X	
General Industry	Sc	Sc	Sc	Sc	Sc	Sc	Sc	X	X	Sc	Sc	Sc	X	X	X	X	
Uses																	As Determined by the Committee
Other Zone																	As Determined by the Committee (Subject to Clause 3 of Plan)

[illegible]

BLOCK REF

[illegible]

X

DAR ES SALAAM MASTER PLAN CENTRAL AREA STUDY
SURVEY SHEET

DISTRICT.....
BLOCK REF.....
PLOT/BLDG.NO....

Town Planning Division
Ministry of Housing

Project Planning Associates Ltd.,
P.O. Box 40, Dar es Salaam,

Name of Bldg: _____ Date: _____
Address: _____ Surveyed by: _____

1. USE:	USE DESCRIPTION	No. DU's	Area/ Sq.Ft.
---------	-----------------	----------	-----------------

Ground Floor

Total

Site Area

Plot Ratio

2. NO. OF STOREYS: _____ 2:

3. BUILDING MATERIAL:
(1) Reinforced Concrete; (2) Concrete Block;
(3) Poles and Mud; (4) Other _____ 3:

4. (1) PERMANENT; (2) NON-PERMANENT _____ 4:

5. CONDITION: (1), (2), (3), (4), (5) _____ 5:

6. AGE:
(1) Date ____ (2) Pre-1914, (3) 1914-1939 (4) After 1939 _____ 6:

7. OFF-STREET PARKING:
(1) Rear ____ x ____ = ____ sq.ft. = ____ spaces
(2) Front ____ x ____ = ____ sq.ft. = ____ spaces
(3) Sides ____ x ____ = ____ sq.ft. = ____ spaces

8. OFF-STREET LOADING: _____

9. RATEABLE VALUE: _____

10. COMMENTS: _____

QUESTIONNAIRE ON PLANNING

I

THE PLANNING AREA

1. Is the present land within the Planning Area, that is the City/Town sufficient for the development schemes shown on the current plan zones? YES ☐ NO ☐
2. If the answer above is NO

Indicate how much extra land is or will be required for each of the following zones by selecting the appropriate percentage of extra land with reference to the date or dates given below. (Tick in the appropriate spaces thus ✓).

	100%	Now	1975	1981	50%	Now	1975	1981	25%	Now	1975	1981	Other %	Now	1975	1981	Other Date
Residential																	
Commercial																	
Civic																	
Industrial																	
Recreational																	
Open Spaces																	
Institutional																	
Roads																	
Agricultural																	
Other: Specify																	

3. Has the Planning Authority any plans to acquire the land you have indicated above? YES ☐ NO ☐ See below:

If the answer is YES:

Indicate what area in acres or percentage is to be acquired for each zone, the date on which it is to be acquired and the method of acquisition, i.e. whether ordinary purchase, compulsory acquisition and whether the land is private or public:

2.

	Acres or Percentage	Date (Year)	Ordinary Purchase	Compulsory Acquisition	Private Land	Public Land
example	500 acres or 15%	1974		✓	✓	
Residential						
Commercial						
Civic						
Industrial						
Recreational						
Open Space						
Institutional						
Roads						
Agricultural						
Other: Specify						

4. The Table below is intended to discover the following:

- (a) The general development in each zone, whether planned or unplanned and whether in accordance with or contrary to the present plan.
- (b) What percentage of the general development in each zone, actual or estimated is in accordance with the current plan.
- (c) What percentage of development occurred before the current plan came into force.
- (d) What percentage of the development will need demolition in order to conform to the current plan.
- (e) What percentage of the development will require change in use to conform to the current plan

(See next page)

3.

Complete the Table with reference to the (a), (b), (c), (d), (e), as described above.

	Degree of General Development (a)						(b)	(c)	(d)	(e)	
	100%	75%	50%	25%	10%	Other %	%	%	%	%	
Residential											
Commercial											
Civic											
Industrial											
Recreational											
Open Spaces											
Institutional											
Roads											
Agricultural											
Other: Specify											

5. The numericals, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, are used here to indicate the degree of priority for each zone for the purposes (a) of necessary further development and (b) acquisition of more land and 1 indicates the highest degree of priority while 10 indicates the lowest degree of priority. Complete the following table for this purpose.

	(a)	Priority	(b)	Priority
Residential				
Commercial				
Civic				
Industrial				
Recreational				
Open Spaces				
Institutional				
Roads				
Agricultural				
Other: Specify				

6. In Question 5 above you have indicated two priorities (a) further development and (b) extra land needed.

The following may be some of the reasons why the sequence of priorities was selected in the order you show, namely:

- (i) Because the present development trends indicate that the present land is likely to be exhausted in that order.
- (ii) Because the government policy emphasize the development of the zones in that order.
- (iii) Because the local planning authority prefers them in that order.
- (iv) Because it is the order I would wish to see followed in the development of this City/Town.
- (v) Because the residents' needs demand this order.
- (vi) Any other? Specify.

(See table over)

4.

In order to connect the priorities with the above reasons complete the table given below:

		(i)	(ii)	(iii)	iv)	(v)	(vi)
Residential	(a) (b)						
Commercial	(a) (b)						
Civic	(a) (b)						
Industrial	(a) (b)						
Recreational	(a) (b)						
Open Spaces	(a) (b)						
Institutional	(a) (b)						
Roads	(a) (b)						
Agricultural	(a) (b)						
Other: Specify	(a) (b)						

7. The Table below is to show what part is played by each of the listed bodies in the development of each of the zones shown below according to the current plan. There are two columns below each body. The first column is to show the present part played by that body and the second column is to show whether that part is likely to increase, decrease or remain constant. With regard to the first column simply give an estimate of percentage. In the second column use letter M if you think the participation is likely to increase in future, letter N where you think there will be a decrease and letter O where the situation is likely to remain the same.

Continued over

[illegible]

6.

8. Who is responsible for discovering whether the Planning Authority is in need of more land?

9. How does he formulate his advice to the Planning Authority (choose the appropriate method below by a tick (✓)

(a) By holding discussions with his colleagues and personnel of the departments concerned. ☐

(b) By carrying out a survey of the planning area ☐

(c) Other methods: specify

10. What other preliminary work is done by the planning department before the planning authority is asked to acquire more land?

11. Does the person in question (8) ☐ or/and the planning department ☐ suggest possible areas of land which may be acquired? YES ☐ NO ☐

12. If the answer to the preceding question (11) is YES

What comes in order of priority for acquisition

(a) Public land ☐

(b) Private Land ☐

(c) Suitable land whether public or private ☐

[Place 1, 2, 3 where appropriate]

13. What final information and documents are placed before the local authority before deciding to apply for extra land? (Tick the appropriate ones on the list below and tick the relevant boxes as well).

(a) a reviewing written ☐ oral ☐ statement by ☐ who is the chief or ☐ planning officer of the Council ☐

(b) Current Development Plan of the Area ☐

(c) Statements of other expert planners: (specify here:)

(d) A land survey map of the area ☐

(e) Map of the land to be acquired ☐

(f) Progress Report (if not in (a)) of the schemes undertaken in each zone on the Plan ☐

7.

- g. Names and addresses of the owners of the land to be affected and of occupiers therein. ☐
- h. Names and addresses ☐ and the types of schemes ☐ of persons who have expressed interest in development if more land is obtained. ☐
- i. Any other: Specify:

14. Is the same information and/or documents you have identified in question 13 above sent to the Minister when he is requested to make a decision on the local authority's request for more land. YES ☐ or NO ☐ If there is a variation list additional information or documents below and if fewer documents or less information from the above is required enlist the same below by referring to Question 13, e.g. (a), (d) (h), etc.)

15. How does the local authority decide to apply for extra land (choose the appropriate method below by ticking it.

- (a) A resolution of full council after full discussion ☐
- (b) Adoption of the statement from permanent official of the planning department. ☐
- (c) The permanent planning personnel goes direct to the minister ☐
- (d) Other: specify

16. Choose the appropriate method by which the decision to acquire more land is communicated to the minister:

- (a) Letter from council to the minister with ☐ without ☐ the relevant documents.
- (b) A copy of the resolution of council accompanied ☐ not accompanied by ☐ the necessary documents
- (c) General minutes of the council are sent to the minister for approval and these may contain a resolution to acquire more land. ☐
- (d) The council sends a delegation of its members ☐ of its permanent planning officers ☐ to communicate the decision to the minister verbally ☐
- (e) Other method: specify

8.

17. Does the local authority make any other representations to the minister. YES ☐ NO ☐

If the answer is YES, choose the manner of communication

- (a) oral ☐ (b) in writing ☐
 (c) by council ☐ (d) by council's planning officers ☐
 (e) by expert spokesman hired by the local authority and if so, specify

18. How long will the minister's decision normally take to come back to the local authority: (choose the appropriate time). More than 5 years ☐
 5 years ☐ 3 years ☐ 2 years ☐ 1 year ☐
 six months ☐ 3 months ☐ one month ☐ other ☐

19. As far as you can remember when was the longest time: (state period here) and the shortest period that the local authority had to wait for the minister's decision?

Can you remember whether during that time there were any peculiar circumstances why the decision had to wait so long: specify here:

Came so quickly: specify here:

20. Has there been any occasion when the local authority's application was rejected by the minister YES ☐ NO ☐

21. How is the minister's decision communicated to the local authority

22. In the event of the minister rejecting the application what alternative course or courses are open to the authority?

23. After the minister has approved the acquisition of more land how long does the council take before implementing the decision.

2 years ☐ 1 year ☐ six months ☐ immediately ☐

other period ☐ depends on the urgency with which the land is required ☐

but in any case not later than ☐ and not before the expiration of ☐
 years ☐ months ☐ days ☐

24. Once the decision to acquire land has been received from the minister (choose the appropriate step(s))

- (a) The council meets again to resolve the acquisition ☐
- (b) The permanent planning official is directed to publish the minister's decision in a newspaper ☐ gazette ☐
on radio ☐ TV. ☐

25. Are the following people informed of the decision to acquire the land in which they are interested

- (a) owners ☐ (b) tenants ☐ (c) occupiers ☐
- (d) squatters ☐ (e) developers interested in the development of the land to be acquired ☐
- any other ☐ specify:

26. The people specified in question 25 above are informed by (a) letters to individuals ☐ (b) official publication in gazette ☐
newspaper ☐ (c) public statement in abaraza ☐
on the radio ☐ T.V. ☐ other ☐ specify:

27. Which form of communication in question 26 do you personally regard as most effective? Specify:

28. What reaction is often received from such people by the publication or communication of the information to acquire their land for a public purpose?

29. Has any of the reactions you have mentioned in question 28 above ever caused the local authority ☐ the minister to [tick the appropriate paragraph]
- (a) Abandon the decision to acquire more land
- (b) Review the decision without abandoning the principle to acquire the land.
- (c) Negotiate with the objectors
- (d) Reduce the area to be acquired
- (e) Take any other course: specify (Briefly explain the paragraphs you have indicated:

10.

30. In the table below

Fill in numbers 1, 2, 3, 4, 5, 6, 7, 8 to indicate the priority of the lands which are easily acquired by compulsory acquisition and (a), (b), (c), (d), (e), (f), (g), (h) to indicate which land is more expensive by way of compensation. 1 would stand for the easiest to acquire while 8 stands for the most difficult to acquire and (a) would stand for the most expensive in compensation while (h) stands for the least expensive.

Type of Land	Ease	Cost
Unoccupied public land to be acquired by a public authority		
Unoccupied public land to be acquired by a private developer		
Occupied public land to be acquired by a public authority		
Occupied public land to be acquired by a private developer		
Unoccupied private land to be acquired by a public authority		
Unoccupied private land to be acquired by a private developer		
Occupied private land to be acquired by a public authority		
Occupied private land to be acquired by a private developer		

In this question assume that the lands are of the same nominal value, in the same area and where occupied there are identical numbers in each with identical property and that the acquirer in each case wishes to develop a similar scheme.

31. When is the value of the land to be acquired assessed by the planning authority [choose the right paragraph below]

(a) Before the decision to acquire it ☐

(b) After the decision to acquire it ☐

32. Who is responsible for the assessment of the value of the property on behalf of the authority?

33. How does he reach his value figures:

34. Is his figure final ☐ verified by some other person ☐
if so who Is he independent
or an employee of the Authority?

35. When and how are the people affected informed of the value they are to be paid in compensation?

11.

36. Are they asked to name their own value of what they think their land and property are worth? YES ☐ NO ☐
37. If the answer is YES in the preceding question choose the appropriate paragraph below which follows after both the authority's offer and the owner or occupier's own value are known:
- (a) The two figures are compared by the authority ☐
- (b) The authority's offer prevails ☐
- (c) The owner or occupiers' figure prevails ☐
- (d) There follows negotiations between the parties for a compromise figure ☐
- (e) If there is no agreement after negotiations the authority's final offer must be accepted ☐
- (f) An independent valuer is hired by both ☐ parties, by the owner or occupier ☐ by the authority ☐ according to the planning law ☐ or some other body is asked to resolve the matter ☐ (specify here:)
- (g) If there is still no agreement the matter may be referred to court ☐
38. Does the fact that a party has objected to the amount of compensation payable delay the procedure for acquiring his land ☐ or does the authority proceed to acquire it in spite of the objection ☐
39. What changes would you like to see introduced about the law of acquisition and compensation?
40. On average, which of the following is usually paid to the owners and occupiers affected by compulsory acquisition? [Tick the appropriate paragraph].
- (a) The authority's original offer ☐
- (b) The owner or occupiers own estimated value ☐
- (c) Compromise figure agreed between the parties ☐
- (d) The value assessed by an independent person ☐
- (e) Other: specify:
41. On average, the amount of compensation payable is (a) over the market value of the property acquired ☐ (b) The market value ☐
- (c) ☐ % of the market value ☐

12.

42. On average, the following people represent or advise the parties in the percentages of cases indicated below:

	Authority %age in which these appear	Owners and Occupier % of cases in which these appear
Permanent officials of authority		
Government valuers		
Independent valuers		
Surveyors or Engineers		
Chiefs of the Area concerned		
Friends and relatives of the people affected		
Representatives of the group affected		
Others: specify		

43. Is there a provision within the planning law for the authority ☐ the Central Planning Board ☐ the Government ☐ some other body: specify ☐ to review the amount of compensation payable in compulsory acquisition cases? YES ☐ NO ☐

If the answer is YES

How often is this done: every [state the period]

44. When was the last occasion that a review of compensation cases was made?
State year here:

45. Which people are consulted in the review? [Tick the relevant people]

- (a) Government experts ☐ (b) local authority experts ☐
(c) planning departments ☐
(i) Local ☐ (ii) national ☐ (iii) foreign experts ☐
(d) members of parliament ☐ ministers ☐ (e) local councillors ☐
(f) owners ☐ (g) occupiers ☐ (h) local associations or clubs ☐
(i) Surveyors and engineers in private practice ☐ (j) developers ☐

QUESTIONNAIRE ON PLANNING

II

OWNERSHIP OF URBAN LAND

1. What percentage of the land in the city/town are owned
(a) publicly , (b) privately .

2. Would you like to see the public ownership of urban land
(a) abolished , (b) decreased , (c) increased , or
(d) would you like to see all the urban land vest in public
ownership ?

Give reasons for the answer you have given:

3. Who carries out the bulk of development in the following zones,
the public through the government, parastatal bodies and local
authorities or the private sector of the community through
companies, firms, co-operatives and individual proprietors?
(Tick the appropriate sectors of (a) and (b))

	(a)			(b)	
	public	private		public	private
Residential			In which of these zones would you like to see a change from what you have indicated is now taking place.		
Commercial					
Civic					
Industrial					
Institutional					
Roads					
Agricultural					
Parks (open spaces)					
Other: Specify					

4. State whether you agree or disagree with the following statements:
(Tick where you agree ✓, and cross where you disagree ✕.)

- (a) In future residential zones , commercial zones ,
industrial zones , institutional zones ,
agricultural zones , will increasingly fall into private
hands for development.

4. (b) All development schemes of whatever description in urban areas should be undertaken by the government or public authorities ☐.
 - (c) Local authorities should undertake the responsibilities of developing their urban areas ☐.
 - (d) Private ownership of land is incompatible with the development of urban areas ☐.
 - (e) Private ownership encourages private development of urban areas ☐.
 - (f) Private ownership of land encourages development of only those areas in which private developers are expected to operate ☐.
 - (g) Public ownership of urban land ensures an orderly and planned development whether the development is public or private ☐.
 - (h) Public ownership of urban land discourages private development even in those zones where private developers are expected to operate ☐.
 - (i) Ownership of land has no effect on how urban areas are developed so long as there is sufficient policy and the other agencies of development ☐.
 - (j) If land is publicly developed it should of necessity be publicly owned ☐.
 - (k) If land is privately developed it should of necessity be privately owned ☐.
 - (l) The ability to develop the land should determine the ownership of that land ☐.
 - (m) Public land which is developed by private individuals or which is capable of being so developed should be owned by them ☐, should be leased to them for ☐ years, or as long as the development scheme in which they have vested interest lasts ☐, ☐.
5. As far as the leasing of public land in urban areas to private individuals is concerned the period should be: ☐ 1000 years; ☐ 100 years; ☐ 50 years; ☐ 25 years; ☐ for the life of the tenant ☐ as long as his family lasts and is still using the land for the use for which it was granted ☐ from year to year basis ☐ any other period, specify ☐. Or the length of the lease should be determined by the use to which it is to be put ☐ or should be an indefinite period ☐.

6. Do you agree or disagree with the following statements (tick ✓ where you agree and cross ✗ where you disagree):
- (a) There should be no differences between leases of public land and leases of private land. ☐
- (b) Conditions of tenure of public leases should be different from conditions of tenure of private leases. ☐
- (c) I would like to see differences in the two kinds of leases in the following respects: here state where you wish to see the differences:

- (a) There should be no differences between leases of public land and leases of private land. ☐
- (b) Conditions of tenure of public leases should be different from conditions of tenure of private leases. ☐
- (c) I would like to see differences in the two kinds of leases in the following respects: here state where you wish to see the differences:

- (b) Conditions of tenure of public leases should be different from conditions of tenure of private leases.

- (c) I would like to see differences in the two kinds of leases in the following respects: here state where you wish to see the differences:

7. State whether the following problems are created either by private development or public development of urban land. Where they are created by private development tick below the letter V; where by public the letter P; and where neither the letter X; and where by both the letter B:

	V	P	X	B
(a) Speculation in land prices				
(b) Delays in acquiring land for development				
(c) High compensation figures				
(d) Delays through elaborate public enquiries				
(e) Siting development projects in unsuitable areas				
(f) Political considerations overriding planning needs				
(g) Discouraging small developers				
(h) Hindering the growth of the national economic plan				
(i) Lack of security for tenants				
(j) Uncontrolled development				
(k) Violating the planning code of the area				
(l) Increases slum dwelling and shanty towns				
(m) Lacks adequate supervision of development projects				
(n) Is often oblivious to the needs of residents				
(o) Discourages capital savings by small earners				
(p) Ignores expert advice				
(q) Is too costly to the nation as a whole				
(r) Any other, specify:				

[A] Policy and Responsibility for Housing:

1. Do you agree (✓) or disagree (X) with the following statements?

- (a) The government's housing policy is designed to provide accommodation for all the people who dwell in the City/Town. ☐
- (b) The government's housing policy is designed to provide accommodation for people employed in government and other public bodies and Institutions. ☐
- (c) The government's housing policy is designed to provide houses for those who can afford to pay for them. ☐
- (d) The government's housing policy is designed to give guidelines but does not specify who is to be accommodated and who is not to be accommodated. ☐
- (e) The government's housing policy determines the number of houses to be built but leaves the responsibility of constructing the required houses to other bodies and persons. ☐
- (f) Any other aim of the policy; specify:

2. State, where possible (a) the number of houses in the Town/City belonging to the specified bodies, (b) the number or percentage of the urban population housed in that type of house and (c) the number or percentage of the population which is eligible or entitled to be so housed but is not and (d) which number or %age of these houses are standard and (e) which are substandard.

BODY	a	b	c	d	e
Government					
Institutions					
Private Sector					
Any other; specify:					

3. Of the number or percentage you have specified in column (c) in question 2 above as unaccommodated by the specified bodies, indicate how they are presently accommodated.

eligible or entitled to	% unaccommodated anywhere	% in government accommodation	% in institutional accommodation	% private	OTHER Specify
Government accommodation					
Institutional accommodation					
Private accommodation					
Other Specify:					

4. Of the people accommodated in the City/Town what percentage or number of the type specified live in the accommodation specified: (a) % or number (b) % or number living in substandard and (c) % or number living in less than substandard accommodation: (if you do not know the others fill in those you know).

Type of people	Government owned housing quarters	Institutional housing quarters	Privately owned housing quarters	Any other Specify
Government employees generally	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
People working for institutions generally	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Private people not employed in Government institutions generally	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Government employees earning 2,000 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Government employees earning between 1,000 & 2,000 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Government employees earning 500-1,000 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)

Type of people	Government owned housing quarters	Institutional housing quarters	Privately owned housing quarters	Any other Specify
Government employees earning less than 10 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
People working for institutions earning 1000 + shs.	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Working in institutions earning 1,000-2,000 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Working in institutions earning between 500 - 1000 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Working in institutions earning less than 500 shs. a month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Private individuals with incomes of 2,000 shs. + per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Private individuals with incomes 1,000 - 2,000 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)
Private individuals with incomes less than 1,000 shs. per month	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)	(a) (b) (c)

5. Specify how the following income groups are determined:

- (a) Upper income group:
- (b) Middle income group:
- (c) Lower income group:
- (d) Any other income group: specify:

6. State the percentage of the following to the total population of the City/Town and the percentage of each group which falls into the percentage of each group which fall into the following income groups as specified in question 5 above.

TYPE OF PEOPLE	%age of City/Town's population	% which is upper income group	% of middle income group	% of lower income group	other type of income group specify:
Government employees i.e. Government Ministries and parastatal bodies					
People working for Institutions like Schools, hospitals					
Self-employed					
People employed by private firms and companies					
Others: specify if possible					

7. Is there a method by which the number of (a) accommodated ☐ (b) unaccommodated ☐ people in the city is determined?

YES

☐

NO

☐

If the answer is YES:

Briefly state the person or persons responsible for the exercise and the manner in which they do it and how frequently:

(c) Persons responsible:

(d) Method of assessment:

(e) How often:

8. Under the previous Five Year Plan the forecast was (Tick [✓] whichever applies and insert the number of houses forecast) that

- (a) The government employees would need houses
 (b) Workers in institutions would need houses
 (c) Private persons would need houses
 (d) The population would need houses
 (e) The City/Town would need houses
 (f) Other, specify: would need houses

9. The forecast in question 8 was above what was needed in the following sectors (insert (a) or (c) or (f) in 8:-)
 and below what was needed
 (insert (a) or (c) or (f) in 8:-)
 whichever applies:

10. Of the forecast (insert the number which was to be constructed
 The government or its agencies
 were to construct for its employees for institutions
 for private persons for the whole population
 for the City/Town or other, specify - houses

11. Of the targets mentioned institutions were to construct for
 government employees for their own employees for
 private persons for Town/the City for the whole population
 for other, specify:

12. Of the targets mentioned the private sector was to construct
 for government employees for institutions for private
 persons for the City/Town for the whole population
 other, specify:

13.

	Houses for Govern- ment em- ployees	Institutions	Private persons	City	Population	Other
At the end of the Plan the Government constructed						
Institutions constructed						
Private sector constructed						
Other; specify; constructed						

14. The houses completed under the previous plan were disposed of as follows:

	Government employees		Institutional workers		Private individuals		Any Other	
	number sold	number let	number sold	number let	number sold	number let	number sold	number let
Government constructed Houses								
Institution's constructed Houses:								
Privately constructed Houses								
By other constructed, Specify:								

15. The current Five Year Plan forecasts that the total number of houses required for the nation will be by the end of (year).
Of these:
- (a) The City/Town will require ☐ houses
 - (b) Government employees in the city will require ☐ houses
 - (c) Institutional workers will require ☐ houses
 - (d) Private persons in the population will require ☐ houses

16. Of the houses mentioned in the Current Plan

- (a) The government intends to build ☐
- (b) The City/Town intends to build ☐
- (c) Institutions will build ☐
- (d) Private sector will build ☐

17. How does the government ensure that the targets for housing forecast in the Current Plan will be reached [specify method]

- (a) Those to be constructed by government or its agencies:
- (b) Those to be constructed by institutions
- (c) Those to be constructed by private firms and individuals.

18. Which of the following do you agree with (✓) or disagree with (X) in relation to the number of houses forecast in the current Five Year Plan?

- (a) Excessive ☐
 (b) Below the requirements of the population ☐
 (c) The right number ☐
 (d) Do not know ☐
 (e) Any other; specify:

19. State whether you agree (✓) or disagree (X) with the following as factors likely to encourage the accommodation of more people in urban centres and state where there should be more, or less, of these factors or whether they should be increased or decreased:
 (Key: M = more or increased, L = less or decreased; and 0 makes no difference) and insert the numbers 1, 2, 3, etc. to indicate the highest and lowest priorities of these factors:

FACTOR	J or X	M	L	1,2,or 3, etc.
) The standard of living of the whole nation The standard of living of the urban population) The cost of living of the urban centres) The cost of living of the nation) The availability of urban land) The cost of urban land The rate charges of urban land and property) The availability of amenities (electricity, water, roads, etc.)) Taxes imposed on urban dwellers Establishing industries in or near urban centres Establishing industries in rural areas) Migration of urban dwellers to rural areas Migration of rural dwellers to urban centres Existence of co-operatives) Existence of mortgage and money lenders' firms [Building Soc.] Protective measures for local investors) Protective measures for foreign investors Protective measures for housing developers) Control of rent) Government obligation to house its employees) Institutions' obligation to house employees) Employers' obligation to house employees Local authorities to house their population The Government responsibility to accommodate everyone Encouraging individuals to build their own houses Encouraging banks to lend money to buyers and builders) Establishing educational institutions in the building trade) Any other; specify				

20. It is assumed that the following measures are necessary to encourage the building of houses and the availability of accommodation. State below each measure suggested whether you agree (✓) or disagree (X) and indicate which authority or body (Government, Local Authority, Central Planning Board, local Planning Committee or any other; specify, which undertakes that measure and insert letter S, if the measure is successful or letter M if the measure is moderately successful and letter F if the measure is not successful and where possible give what you consider the reason for this success or failure. (E.g. : The census of the urban population is periodically carried out. ✓ The Government, M, because of the temporary nature of the residents)

- (a) Careful selection of people to be in charge of the housing policy: ☐
- (b) Control of the people responsible for house construction: ☐
- (c) Control of the officials responsible for allocating houses available for accommodation: ☐
- (d) Appointment of housing inspectors ☐
- (e) Initiating self-help housing experimental schemes: ☐
- (f) Encouraging banks to lend building money ☐ ☐
- house purchase money ☐ ☐
- subsidising rent ☐ ☐
- to government employees ☐ ☐
- institutional workers ☐ ☐
- private persons ☐ ☐

(Tick (✓) in the appropriate boxes)

- (g) Encouraging Building Societies to lend building money ☐ ☐
- house purchase money ☐ ☐
- subsidising rent ☐ ☐
- to government employees ☐ ☐
- institutional workers ☐ ☐
- private persons ☐ ☐

(Tick (✓) in the appropriate boxes)

- (h) Gives capital loans or Grants to:-
- | | <u>Loans</u> | <u>Grants</u> |
|----------------------------|--------------------------|--------------------------|
| Banks | <input type="checkbox"/> | <input type="checkbox"/> |
| Building Societies | <input type="checkbox"/> | <input type="checkbox"/> |
| Co-operatives | <input type="checkbox"/> | <input type="checkbox"/> |
| Individuals | <input type="checkbox"/> | <input type="checkbox"/> |
| For the purposes of buying | <input type="checkbox"/> | <input type="checkbox"/> |
| Investing | <input type="checkbox"/> | <input type="checkbox"/> |
| Lending | <input type="checkbox"/> | <input type="checkbox"/> |
| Building | <input type="checkbox"/> | <input type="checkbox"/> |
| Residential Houses: | <input type="checkbox"/> | <input type="checkbox"/> |

(Tick (✓) in the appropriate boxes)

- (i) Engages experts to assist its own house construction agencies
Institutional agencies
Private builders

☐
☐
☐

- (j) Reduction of housebuilding costs by
Controlling the cost of land
Of building materials

☐
☐

- (k) Controlled Rents to be charged for accommodation
Specify:

☐

- (l) Reduced/increased rate charges
Elaborate

☐

- (m) Fair-measures to control relationship between Landlords and
tenants
Specify

☐☐

QUESTIONNAIRES ON HOUSING

(B) FINANCE

(I) GOVERNMENT HOUSES (Let or to be let to Government employees) sometimes known as HOUSES IN THE GOVERNMENT POOL.

1. Which of the following sources contribute to the construction or otherwise provide houses (e.g. purchase) in the Government Pool. (Tick (✓) the relevant sources and in each case estimate the percentage of the money of each source contributes to the total requirements. (I) refers to the previous Five Year Plan and II refers to the Current Plan.)

SOURCE	Tick(✓)	Percentage	
		I %	II
(a) Government direct grant from the Treasury			
(b) Government direct grant from any other source, specify:			
() Government loans to the public institutions responsible for providing Government houses: specify the institutions:			
(d) The National Housing Corporation generally and from i) its capital ii) its profits iii) borrowing iv) any other: specify			
(e) Investments of national firms, building societies, and individuals into Government houses; specify;			
(f) Foreign governments' financial aid direct i) to Government ii) to public bodies responsible for constructing and providing Government houses			
(g) Loans by foreign foundations and firms to i) Government ii) To public bodies responsible for constructing and providing Government houses			
(h) Local authorities' locally raised revenue i) specifically earmarked for providing Government houses ii) invested in Government houses.			

Government, Foundation or Firm	Amount or Percentage	Year

-3-

6. State whether you agree or disagree with the following statements: (✓ or X)

- | | |
|---|--------------------------|
| (a) The houses in the Government 'Pool' should be maintained but any further constructed houses should be sold to the general public. | <input type="checkbox"/> |
| (b) The Government must continue to be responsible for accommodating its employees. | <input type="checkbox"/> |
| (c) The policy of accommodating its employees by the Government encourages | <input type="checkbox"/> |
| discourages | <input type="checkbox"/> |
| does not have any effect on owner occupier houses | <input type="checkbox"/> |
| likely to be produced in future. | |
| (d) Government rented accommodation should continue to be | |
| on a subsidised basis | <input type="checkbox"/> |
| on a commercial basis | <input type="checkbox"/> |
| i) because this will encourage Government employees to build or purchase their own houses | <input type="checkbox"/> |
| ii) encourage prospective employees of the Government to apply for jobs. | <input type="checkbox"/> |
| iii) introduce competition in the housing trade and thus encourage the availability of more accommodation. | <input type="checkbox"/> |
| iv) Any other, specify; | |

-5 -

8. In case of loans for housing purposes what percentages, if any, of the money required is provided by the following sources.

Group	Personal	Gov't Loan	Institutional Loan	Building Society	Banks	Other: Specify
Upper Income						
Middle Income						
Lower Income						
Any Other						
Specify:						

9. In the last/current Five Year Plan, what amount of money did the following give in loans for housing purposes compared to the total given by all of them (state the amount or percentage). First, state the:

	Last Five Year Plan	%	Current Five Year Plan	%
Total Amount Loan:				
Government:				
Government Finance Bodies:				
Building Societies:				
Banks:				
Foreign Investors:				
Local Authorities:				
Co-operatives:				
Any other, specify:				

10. What securities are required by:-

- (a) Building Societies
- (b) Money Lenders: Specify:
- (c) Banks: Specify:
- (d) Government:
- (e) Government Institutions: Specify:
- (f) Any other: Specify.

for lending money for housing projects?

11. What rate of interest per annum is asked by:

- a) Government
- b) Banks
- c) Building Societies
- d) Money Lenders
- e) Government Institutions
- Any other

12. What is the usual period given by each of the bodies mentioned in Question 11 in which the loan is to be repaid (state each and the period it gives)

13. How are the prospective builders, or buyers of houses informed of the credit facilities available in the country?

- a) by Government
- b) Building Societies
- c) other; specify

14. What criteria do the lending bodies consider in deciding the applications made to them?

15. State whether you agree (✓) or disagree with the following:

- a) The rate of interest charged by the lending bodies is determined by the parties.
- b) The interest is determined by the market conditions
- c) There is a specific law which provides for interest to be charged; specify:

16. In obtaining loans which of the following tend to get priority (Insert 1,2,3, etc in order of priority).

- a) Upper Income group
- b) Middle Income Group
- c) Lower Income Group
- d) Government Employees
- e) Self-employed persons
- f) Established businessmen
- g) Potential Businessmen
- h) Permanent employees of government
- i) Permanent employees of well established bodies
- j) Residents of the area concerned generally:

17. Which groups of people tend to get the largest single sums of money loaned? (state the groups in order of priority and state what you consider to be large sums)

18. Which of the groups tend to get longer periods in which to repay?

19. Which periods are usually allowed for repayment?

20. Is the financial ability of the applicant considered in:

- a) fixing the period in which he will pay back
- b) the amount of loan
- c) the rate of interest and security to be given

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UNIVERSITY OF NAIROBI, Institute for Development Studies and Housing and Rural Development Unit, Nairobi.

UNIVERSITY OF OXFORD, Institute of Commonwealth Studies, Oxford.

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International Law Quarterly

International Social Development Review

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Journal of African Administration

Journal of African History

Journal of Agricultural Economics

Journal of the American Institute of Planners

Journal of Comparative Administration
Journal of Development Planning
Journal of Development Studies
Journal of International Affairs
Journal of the International Commission of Jurists
Journal of Law and Economic Development
Journal of Law Education
Journal of Legal Studies
Journal of Modern African Studies
Journal of Planning and Environmental Law
Journal of Planning and Property Law
Journal of Public Health
Journal of the Uganda Society
Journal of Tropical Agriculture

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VIII. ABBREVIATIONS

- ALL E.L.R. - All England Law Reports
- E.A. - East Africa Law Reports
- E.A.C.A. - Court of Appeal for Eastern Africa
- K.L.R. - Kenya Law Reports
- T.L.R. - Tanganyika Law Reports
- U.L.R. - Uganda Law Reports
- U.N.D. P. - United Nations Development Programme